Ministry of Health
Ontario
Ministère de la Santé

THE REVIEW OF
THE REPORT ON
THE CONFIDENTIALITY OF
HEALTH INFORMATION

REPORT

on the

Practical Implications to the Health Care System, and Providers and Consumers of Care, of Implementing The Recommendations of The Report of the Commission of Inquiry into The Confidentiality of Health Information.

(The Krever Report)

By

J. D. Galloway, MD, DHA.

October 31, 1981.

Ontario

Shop Canadian

Ministry
of
Health

November 4, 1981

The Honourable Dennis Timbrell,
Minister of Health for Ontario.

Dear Mr. Minister:

I enclose herewith the report I was asked by you on June 29, 1981 to prepare on the practical implications for the health care system and providers and consumers of care, of implementing the recommendations of the Commission of Inquiry into The Confidentiality of Health Information.

My report is based on a review of both the Commission Report and of the various bodies and individuals to the Report. My recommendations are based in part on material and recommendations contained in the report and the views and concerns expressed by respondents, but also on personal experience as a health administrator in Ontario for more than twenty years.

Yours sincerely,

JD Galloway

J.D. Galloway, MD, DHA.

Enclosure

Annex 1

Terms of Reference

Dr. James Galloway

Advisor to the Ministry of Health on Implementation of Krever Report

In January 1981, the Ministry of Health proposed to seek the advice of an individual with knowledge, experience and recognized standing in the Ontario health care field on how the recommendations of the Krever Commission Report can be implemented expeditiously. Dr. James Galloway has agreed to serve in this capacity.

Dr. Galloway will be guided by the following Terms of Reference:

Purpose 1. To serve as the advisor to the Minister of Health on the practical implications, for the health care system and providers and consumers of care, of implementing the recommendations of the Krever Report.

Process 2. To receive comments of external interest groups potentially affected by the implementation of particular recommendations, or alternatively and at his discretion, to solicit comment from particular groups or from Justice Krever.

3. To establish and maintain liaison, either individually or collectively, with contact persons identified by external interest groups, to facilitate (2) above.

Product 4. To provide, to the Minister of Health, an assessment of the practical implications upon health care systems, and providers and consumers, of implementing the Krever recommendations, including:

- (a) areas, issues or recommendations for which there is general agreement on implications;
- (b) areas, issues or recommendations for which there is a divergence of views, along with suggestions of approaches to reconcile the divergent viewpoints, or of the different circumstances in which the different views might apply;
- (c) areas, issues or recommendations for which the divergent viewpoints appear irreconcilable, and an indication of the implications of adopting the alternative viewpoints;

(d) recommendations of preferred positions, or an assessment of balance of evidence, or recommendations of further study or consultation by the Ministry;

(e) other advice or comment as seems appropriate.

Support 5. To be provided with clerical, secretarial and analytical support from the staff of the Policy Development Branch.

Approved June 29, 1981

Annex 2

Report of the Commission of Inquiry into the Confidentiality of Health Information

Detailed Analysis of Responses to Recommendations

Chapter 1: Introduction

1. THAT NO PROSECUTIONS BE UNDERTAKEN AGAINST THOSE PERSONS WHOSE CONDUCT IS CRITICIZED IN THIS REPORT.

Comment: Nil.

Recommendation:

Nil. Subject to comment and recommendation of the Attorney-General.

INTRODUCTION

On June 29, 1981, I was asked to report on the practical implications, for the health care system and providers and consumers of care, of implementing the recommendations of the Report of the Commission of Inquiry into The Confidentiality of Health Information (The Krever Report). The Terms of Reference given to me for this task are attached as Annex 1.

THE REVIEW PROCESS

The first task in preparing this report was a complete review of the Commission of Inquiry's Report and its 170 recommendations. In this task, the writer was assisted by Mr. D. Lepofsky of the Policy Development Branch of the Ministry of Health, who prepared a series of papers on the policy issues arising from the recommendations.

Early in July 1981, Mr. Timbrell, Minister of Health wrote to external groups, representative of health care providers and consumers, advising them that the Ministry of Health had accepted the major principles and directions represented in the Report, announcing the writer's appointment to assist in the review process of determining how to implement the recommendations contained in the Report, and inviting responses on the practical effects of implementing these recommendations.

Responses were to have been submitted in sufficient time for my report to be completed by September 30, 1981. This was later extended, at the request of some of the respondents, to October 31, 1981.

Resulting from this invitation, responses were received from the following:

The College of Physicians and Surgeons of Ontario,
*Ontario Medical Association,
Ontario Chapter, College of Family Physicians of Canada,
Ontario Psychiatric Association, Legislative Review Committee,
**R.W. Gunton, MD, Physician, London, Ontario,
**C.L.R. McIlwaine, MB, Physician, St. Thomas, Ontario
*Ontario Hospital Association,
**Toronto General Hospital,
**Sudbury Memorial Hospital,
College of Nurses of Ontario,
Registered Nurses' Association of Ontario,
Association of Nursing Directors and Supervisors of Ontario Official Health Agencies,
Ontario College of Pharmacists,
Ontario Pharmacists' Association,
Ontario Branch, Canadian Society of Hospital Pharmacists,

The Ontario Board of Examiners in Psychology,
Ontario Psychological Association,
Ontario Physiotherapy Association,
Ontario College of Health Record Administrators/Ontario Health Record Association,
Board of Directors of Chiropractic,
The Ontario Cancer Treatment and Research Foundation,
Haliburton, Kawartha and Pine Ridge District Health Council,
Lambton District Health Council, on behalf of:

  Essex County District Health Council,
  Grey/Bruce District Health Council,
  Lambton District Health Council,
  Thames Valley District Health Council,

Niagara District Health Council,
The Ontario Association for the Mentally Retarded,
Advocacy Resource Centre for the Handicapped,
Consumers Association of Canada (Ontario),
**Government of Canada Pension Commission,
***The Workmen's Compensation Board, Ontario.

*Response prepared by Association staff, not approved by Association Board of Directors at time of preparing this report,
**Unsolicited response,
***Submitted by Ministry of Labour,

Additionally, and at their requests, meetings were held as follows:

Ontario Hospital Association, (Mr. Peter Wood, Director of Communications), and Ontario Medical Association, (Dr. Jack A. Saunders, Director of Health Services), August 28, 1981.

The College of Physicians and Surgeons of Ontario
  Dr. Philip G. Klotz, President
  Dr. Michael Dixon, Registrar
  Dr. H.W. Henderson, Deputy Registrar
  September 1, 1981

Health Disciplines Board
  Mr. Edward A. Pickering, Chairman
  Mr. Donald Mackay (Ministry of Health)
  September 18, 1981

Toronto Medical Legal Society
  Mr. Ian Outerbridge, President
  October 13, 1981.

Advantage was also taken of opportunities to hear the views of hospital administrators and health care providers, at a conference sponsored by the Ontario Hospital Association, in Toronto on March 30, 1981, to review the Commission Report and the comments and concerns of public health workers, at the Annual Convention of the Ontario Public Health Association, in Toronto on October 20, 1981.

The comments, concerns and recommendations of the various respondents have been carefully reviewed and are synopsized in the "Comments" column of the Detailed Analysis of Responses to Recommendations of the Report, enclosed as Annex 2, to this report. Recommendations concerning individual recommendations or groups of recommendations, are set out in the "Recommendations" column of the Detailed Analysis. These take into consideration the views of the respondents, but they are the recommendations of the writer, based on a review of the Commission Report, a review of the responses to the Report, as well as personal views, based on past experience as a health administrator.

GENERAL CONSIDERATIONS

In the examination of the individual recommendations of the Report, consideration has been given to whether the recommendation or revisions suggested by respondents, will really serve the best interest of the individual and/or society as intended; whether the benefit likely to result will justify the additional cost; whether it is practical and implementable without developing a rigid bureaucratic system that will stifle, rather than improve the province's health care system.

Considerable concern has been expressed by many of the respondents that, efforts to protect the confidentiality of personal health information, could unintentionally interfere with the free and prompt flow of health information between health care providers and health care facilities that is necessary for the ongoing care of the individual as he or she moves through the system, or necessary for the protection of other individuals who may be placed at risk by the illness of the individual. The impedance of this necessary transfer of health information between those who need to know, can adversely affect the care of the individual or the protection of others, and give rise to as much criticism as can breaches of confidentiality. An attempt has been made to keep this concern in mind, during the examination of the individual recommendations of the Report, and should be continued, as consideration is given to whether or not to implement the recommendations.

When considering whether proposed changes as recommended are practical and implementable, it is important too, to consider ways and means of gaining compliance by those most affected by the changes. Obviously, involvement in the decision process is more likely to gain compliance than regulations that are imposed from outside, and for that reason, it is suggested it would be desirable to use the advice and expertise of experienced people in the field, when evaluating the practicability and implementability of recommended change in specialized areas, such as student health services and occupational health services.

COSTS TO THE HEALTH CARE SYSTEM

A number of respondents have expressed some concern about the additional costs that will be imposed upon the health care system by implementing the recommendations of the Report. The Toronto General Hospital has estimated that the additional cost to that institution alone, will be approximately $125,000 per year. Unfortunately, it is not possible to determine either the accuracy of that hospital's estimate or the likely additional costs to the health care system as a whole. There is, however, no doubt that the changes recommended will impose additional costs. Whether the benefits will justify these additional costs remains to be seen. Nevertheless, these costs should be considered in deciding whether or not to implement the recommendations, either as proposed by the Commission, or in modified form.

RECOMMENDATIONS NOT ADDRESSED

There are a number of recommendations in the early chapters of the Commission Report pertaining to possible actions against persons criticized in the report, and proposed changes to tighten controls on insurers and private investigators. These have been considered to be outside the scope of this report and inappropriate for comments or recommendations concerning implementation. It is understood these have been referred to appropriate branches of the Ministry of Health or the other ministries of Government, which presumably will advise regarding implementation. These are recommendations 1, 3-9, 11-13 and 29-34.

CONFIDENTIALITY OF HEALTH INFORMATION

A large number of the recommendations of the Report, while listed in a number of chapters under a variety of headings, deal primarily with the confidentiality of health information. There appears to be a general acceptance by all respondents of these recommendations. The concerns of various respondents to specific recommendations are reflected in the Detailed Analysis of Responses to Recommendations (Annex 2), and with few exceptions, it appears that these could be implemented, although it is recommended that due regard be paid to the concern of the respondents, and to the modifications recommended and reflected in the "Recommendation" column of the Detailed Analysis of Responses for each individual recommendation, or group of recommendations. This applies to recommendations 2, 10, 14-28, 35-38, 40-79, 81 and 86-103.

It is recommended that these recommendations be implemented with due regard to the concerns expressed by various respondents, and specific recommendations set out in the Detailed Analysis of Responses to Recommendations (Annex 2). In a few instances, and this is indicated in the Detailed Analysis, it is recommended additional advice should be obtained from various sources, before a final decision is made regarding implementation.

ACCESS TO ONE'S OWN HEALTH RECORDS

During the course of the Commission's Inquiry, an issue other than that originally intended for review emerged. That was a consideration of an individual's right to access to his own health information. Mr. Justice Krever has stated in the Report that this was one of the most controversial and emotional subjects dealt with during the inquiry. Not surprisingly, therefore, recommendations 82-85 in Chapter 23 of the Report, and a few other recommendations affected by recommendations 82-85, evoked the most negative responses, particularly from physicians, psychiatrists and psychologists. Because of the strong negative response, the comments of all respondents to these four recommendations have been recorded in much greater detail than the responses to other recommendations. Indeed many of the responses have been quoted verbatim in the Detailed Analysis of Responses, in order to provide an opportunity to review in detail, the comments and the concerns expressed by the various respondents.

In general, the various bodies and individuals who responded to the Report, have agreed with the principle of the individual's right of access to his or her own health information. Not surprisingly, however, the majority of organizations and individuals who responded, and particularly those representative of health care professionals, such as physicians, psychiatrists and psychologists, whose reports are most likely to contain highly sensitive materials, have indicated that; while they support the right of access to one's own health information, they strongly oppose any right to free access to the records.

Generally, they indicate that these records may contain opinions, technical data, third party reports that may have been given in confidence by family members, and other information that may be subject to misinterpretation, and which requires interpretation by a professional person. In the experience of the writer, physicians' records frequently do contain a great deal of technical jargon and abbreviations that do require interpretation if they are to be comprehensible. In this regard, the Ontario Hospital Association and the Ontario Medical Association have indicated their willingness to jointly undertake to update and refine guidelines developed by these two associations to assist hospitals, health care facilities and their medical staffs, to set up procedures to provide access to information with interpretation without the need for legal process, while the College of Physicians and Surgeons of Ontario would undertake to ensure its registrants would comply.

Similarly, there has been general support of the right of the individual to correct errors in factual information contained in personal health records, but strong opposition to any right to change recorded opinions and factual information with which the individual may, for whatever reason, disagree even though it may be correct. Many of the respondents feel it would be preferable that the individual should indicate his disagreement, rather than altering a record and with this the writer is inclined to agree.

It seems to the writer that some changes are desirable and required. In many, perhaps most instances, no harm can be seen in giving the individual access to his own records, although it would be advisable that this should be accompanied by interpretation by a competent person, and preferably by the individual who entered the information in the record. There would, however, have to be a mechanism for protecting the confidentiality of information given in confidence by a third party, such as a family member, which may be included in the record.

Certainly it would appear reasonable to provide the individual with a written copy of any report forwarded with consent to a third party, as has been suggested by at least one respondent. This procedure, however, should not be allowed to interfere with the normal flow of health information between health care professionals and health care facilities, which is necessary for the continuing care of the individual as he or she moves through the health care system.

It seems reasonable too, that the individual should be able to have direct access to personal health records in the circumstances in which legislation presently allows access by the individual's designated representative. Certainly in the circumstances outlined by the Chairman of the Health Disciplines Board, it seems unreasonable that all parties to a complaint hearing of that Board may have access to the individual's personal health record except the individual himself or herself.

Notwithstanding what Mr. Justice Krever has stated in the Report, it is believed that if recommendations 82-85 of the Report are implemented, that those health care providers who deal with highly sensitive information would omit such information from records to which the individual will have the right of direct access, and that such omissions could have adverse affects upon the future health care of the individual.

It would be unrealistic to expect one individual to be able to foresee all the implications in every circumstance of recommendations 82-85. Moreover, experience has shown that compliance with regulations is more likely to be gained if those being regulated are involved in the decision process. For these reasons it is recommended that before any decisions are made to implement recommendations 82-85, and other recommendations affected by recommendations 82-85, that an ad hoc advisory task force of individuals with expertise and experience from various interested groups, should be set up to examine all the implications, and to advise the Minister on the implementation, of these recommendations as submitted or as modified.

STUDENT HEALTH INFORMATION

Medical officers of health, public health nurses and various physician groups, have expressed some concern about recommendations 104-106, in Chapter 29 of the Report, and particularly about the practicalities of transfer of information related to the health of students, the need for consent to transfer non-sensitive information, such as immunization records, visual and hearing problems and the day-to-day control of communicable diseases in schools. Care needs to be exercised to ensure that any regulations put into effect are practical and will serve the best interests of the individuals and society, while protecting to the greatest extent possible, the confidentiality of personal health information, particularly that of a sensitive nature.

It is recommended that there should be consultation with the Ministry of Education, and that the advice of persons with experience in the field of student health services, such as medical officers of health, student health physicians and public health nurses, should be obtained to assist in decisions regarding the implementation of recommendations 104-106 of the Report.

EMPLOYEE HEALTH INFORMATION

The majority of respondents were generally supportive of recommendations 107-141 set out in Chapter 30 of the Report. Notwithstanding this, however, it is considered advisable and it is so recommended, that there should be consultation with the Ministry of Labour, and that the advice of experienced occupational health physicians and nurses, as well as personnel directors, should be obtained to assist in making decisions regarding the implementation of recommendations 107-141 of the Report.

THE WORKMEN'S COMPENSATION BOARD

Comments of various respondents including the Workmen's Compensation Board, to recommendations 142-153 in Chapter 32 of the Report, are set out in the Detailed Analysis of Responses to Recommendations and some specific recommendations have been made concerning the implementation of individual recommendations.

Notwithstanding this, it is recommended that there should be consultation with the Ministry of Labour and with representatives of the Workmen's Compensation Board, Ontario, and that the advice of experienced occupational health physicians should be obtained to assist in making decisions regarding the implementation of recommendations 142-153 of the Report.

THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1978

Again, the comments of various respondents and specific recommendations concerning recommendations 154-170 in Chapter 33 of the Report have been set out in the Detailed Analysis of Responses to Recommendations.

In general, however, it would seem advisable and it is so recommended that there should be consultation with the Ministry of Labour, and that the advice of experienced occupational health physicians and others where appropriate, should be obtained to assist in making decisions regarding the implementation of recommendations 154-170 of the Report.

PUBLIC AWARENESS

Several of the respondents have commented on the need for public education of the public at large concerning their rights, and health care workers in their responsibilities in protecting the rights of the public, and have offered assistance in mounting such educational programs.

J.D. Galloway, MD, DHA.

October 31, 1981.

Chapter 14: The Automobile Casualty and Liability Insurance Industry in Retrospect

11. THAT WHEREVER A DUTY OF CONFIDENTIALITY WITH RESPECT TO HEALTH INFORMATION IS FOUND IN A REGULATION, IT BE TRANSFERRED THEREFROM TO THE PARENT STATUTE.

Comment:

The College of Physicians and Surgeons of Ontario (CPSO) feels this should remain a requirement of ethical conduct for physicians and that the recommendation is inconsistent with recommendation 22. OMA and OHA have no concerns.

Recommendation:

Subject to consideration and recommendation of Consumer and Commercial Relations.

12. THAT IN CONNECTION WITH THIRD PARTY LIABILITY CLAIMS, INSURANCE COMPANIES, THEIR AGENTS AND REPRESENTATIVES BE PROHIBITED FROM COMMUNICATING WITH PHYSICIANS, HOSPITALS OR OTHER PERSONS UNDER A DUTY TO KEEP HEALTH INFORMATION CONFIDENTIAL UNLESS THE PATIENTS CONCERNED HAVE EXPRESSLY AUTHORIZED THE COMMUNICATION.

Comment:

OCHRA/OHRA agree with the recommendation. Ontario Physiotherapy Association agrees with the recommendation and feels it should be included in legislation.

Recommendation:

No recommendation. Subject to consideration and recommendation by Consumer and Commercial Relations.

13. THAT A STATUTORY RIGHT BE CREATED PERMITTING A PATIENT WHOSE HEALTH INFORMATION HAS BEEN DISCLOSED WITHOUT HIS OR HER AUTHORIZATION, TO MAINTAIN A CIVIL ACTION FOR THE GREATER OF HIS OR HER ACTUAL DAMAGES OR $10,000. AGAINST:

    (A) ANY HEALTH CARE PROVIDER OR OTHER PERSON UNDER AN OBLIGATION TO KEEP HEALTH INFORMATION ABOUT THE PATIENT CONFIDENTIAL, WHO UNJUSTIFIABLY DISCLOSES HIS OR HER HEALTH INFORMATION TO A THIRD PERSON; AND

    (B) ANY PERSON WHO INDUCED ANYONE UNDER AN OBLIGATION TO KEEP HEALTH INFORMATION CONFIDENTIAL, UNJUSTIFIABLY TO DISCLOSE HIS OR HER HEALTH INFORMATION.

Comment:

CPSO supports the principle of the recommendation but questions the need for a "statutory right" to seek damages through the courts.

OMA sympathizes with the intent of the recommendation including the severity of the penalty as a significant deterrent, but is not aware of any other legislation that contains such a penalty leaving it to the courts to make that decision.

OMA also expresses concern that any legislation not be so restrictive as to limit the exchange of information between physicians and between physician and family members. It would be necessary to clearly define "unjustifiable disclosure". This could be a difficult if not impossible task requiring judgment by the physician or interpretation by the courts - circumstances in each case could vary, being considered justifiable in one case, not justifiable in another.

OHA considers the penalty too severe and suggests it should be the greater of his or her actual damages or $1,000. against a health care provider; the greater of his or her damages or $10,000. against "any person who induced anyone".

Toronto General Hospital has concern that any legislation not interfere with the free flow of information between health professionals necessary to treat the patient without need of the patients' written authorization.

The College of Nurses of Ontario support the recommendation in principle, but considers a minimum penalty of $10,000. to be more onerous than required to accomplish the goal intended.

OCHRA/OHRA consider that the recommendation could conflict with recommendation 27 if taken on its own, as the latter appears to exclude information given to the police which is not to be notated in the records.

The Ontario Psychological Association (Ont. Psych. Ass'n) feels that professionals should not be held liable for disclosure permitted by the implementation of recommendations 13 and 22 and that regardless of the setting, disclosure where there is reasonable cause to believe a patient is dangerous should not amount to professional misconduct.

Ontario Physiotherapy Association agree with the recommendation but expresses concern regarding the possibility of students being sued for inadvertent breach of confidentiality and feel the need for direction, what is health information and how it may be used in the educational process.

Recommendation:

Subject to consideration and recommendation by Consumer and Commercial Relations.

Chapter 16: The Police and Law Enforcement

14. THAT ALL NECESSARY STEPS BE TAKEN TO SEPARATE ACCOMMODATION FOR THE POLICE FROM OHIP FACILITIES.

Comment:

OMA agrees.

Recommendation:

Implement the recommendation.

15. (1) THAT THE DISTRICT MANAGER OF OHIP OR A PERSON DESIGNATED BY HIM OR HER IN WRITING AT A DISTRICT OR SATELLITE OFFICE, AND ONLY SUCH A PERSON, BE PERMITTED TO DISCLOSE ENROLMENT INFORMATION TO THE POLICE.

(2) THAT THIS PERSON SO DESIGNATED MUST ENSURE THAT THE PERSON SEEKING THE ENROLMENT INFORMATION, IS, IN FACT, A POLICE OFFICER BY REQUIRING THE POLICE OFFICER TO ATTEND IN PERSON OR BY THE USE OF A CALL-BACK SYSTEM.

(3) THAT A LOG BE MAINTAINED AT EVERY DISTRICT AND SATELLITE OFFICE TO RECORD THE DATE OF THE REQUEST, THE NAME OF THE PERSON SEEKING THE INFORMATION, HIS OR HER POLICE FORCE, HIS OR HER BADGE NUMBER, THE SUBSCRIBER OR PERSON ABOUT WHOM THE INFORMATION WAS REQUESTED, AND WHY THE INFORMATION WAS SOUGHT AND GIVEN.

Comment:

OMA agrees with the need to have information available but also with the need for reasonable safeguards.

Ontario Physiotherapy Association feels the police officer should be required to attend in person because any call-back system may not be foolproof.

Ontario Psychological Association comments with respect to recommendations 15, 20, 22, 23, 24, 25, 79, 80, 104 and 119 (disclosure of information without consent) that these recommendations could cause considerable confusion and conflict in legislation if implemented as they stand. They recommend:

> That wherever possible, the authority to disclose psychological information be that of the psychologist who obtained the information. Where this is not possible, every reasonable attempt be made to notify the psychologist of a disclosure.
>
> That regardless of the setting, a threat to the life or safety of any other person be grounds for disclosure.

That procedures for disclosure be appropriate to the circumstances or reasons requiring disclosure, and

That insofar as possible, authority, conditions and procedures for disclosure be consistent across all settings in which health care is provided.

Recommendation:

Implement the recommendation.

16. THAT OHIP BE REQUIRED TO REPORT YEARLY TO THE MINISTER OF HEALTH PARTICULARS OF THE NUMBER OF REQUESTS RECEIVED FROM THE POLICE, IN GENERAL TERMS, THE CIRCUMSTANCES UNDER WHICH INFORMATION WAS SOUGHT AND THE NUMBER OF OCCASIONS ON WHICH ENROLMENT INFORMATION WAS GIVEN. THE MINISTER OF HEALTH SHOULD MAKE FULL DISCLOSURE OF THIS OHIP REPORT TO THE PUBLIC.

Comment:

Sudbury Memorial Hospital questions the need for the Minister to receive reports and to make full disclosure to the public; suggests OHIP should maintain records and have them available if requested.

Recommendation:

Implement the recommendation.

17. THAT NO EMPLOYEE OF OHIP BE PERMITTED TO RELEASE HEALTH INFORMATION TO ANY POLICE FORCE WITHOUT A SEARCH WARRANT. THE DISTRICT MANAGER OF OHIP OR A PERSON DESIGNATED BY HIM OR HER IN WRITING AT A DISTRICT OR SATELLITE OFFICE SHOULD, HOWEVER, BE PERMITTED TO ANSWER, YES OR NO, TO THE QUESTION OF ANY POLICE OFFICER WHETHER OHIP HAS SPECIFIC INFORMATION ABOUT A NAMED PERSON.

Comment:

Ontario Physiotherapy Association disagrees with the recommendation feeling the police may obtain all the information they wish by asking specific questions.

Recommendation:

Implement the recommendation.

18. (1) THAT THE DIRECTOR OF THE INSURANCE CLAIMS BRANCH OF OHIP, OR A PERSON DESIGNATED BY HIM OR HER IN WRITING, BE PERMITTED TO DISCLOSE, IN WRITING, ENROLMENT INFORMATION TO THE DEPARTMENT OF EMPLOYMENT AND IMMIGRATION, IN RESPONSE TO A WRITTEN REQUEST SETTING OUT THE PURPOSE FOR WHICH THE ENROLMENT INFORMATION IS REQUIRED.

(2) THAT OHIP KEEP A COPY OF EVERY WRITTEN REQUEST AND REPLY IN A CENTRAL LOCATION.

Comment: Nil.

Recommendation:

Implement the recommendation.

19. THAT OHIP BE REQUIRED TO REPORT YEARLY TO THE MINISTER OF HEALTH PARTICULARS OF THE NUMBERS OF REQUESTS RECEIVED FROM THE DEPARTMENT OF EMPLOYMENT AND IMMIGRATION, THE PARTICULARS FOR WHICH THE ENROLMENT INFORMATION WAS REQUIRED, THE NUMBER OF REQUESTS AND THE NUMBER OF REASONS ON WHICH ENROLMENT INFORMATION WAS GIVEN. THE MINISTER OF HEALTH SHOULD MAKE THIS OHIP REPORT PUBLIC.

Comment:

Sudbury Memorial Hospital questions the need for the Minister to receive reports and make them public. Suggests OHIP should maintain records and report if requested.

Ontario Physiotherapy Association comment they do not see the purpose this recommendation would serve.

Recommendation:

Implement the recommendation.

20. THAT HOSPITAL HEALTH CARE FACILITIES AND INDIVIDUAL HEALTH CARE PROVIDERS BE PERMITTED TO DISCLOSE INFORMATION TO THE POLICE ABOUT A PATIENT WHO THE POLICE REASONABLY BELIEVE IS DEAD, FOR THE PURPOSE OF AIDING IN IDENTIFICATION OF A BODY.

Comment:

CPSO agrees with the recommendation.

OMA supports the recommendation but suggests this authority now exists through The Coroner's Act.

OHA agrees with the recommendation.

OCHRA/OHRA agree with the recommendation but suggest it should be qualified by inserting "limited to the information required" in front of "for the purposes of" and by adding "and notification of next of kin" at the end of the recommendation.

Recommendation:

Implement the recommendation with consideration to revisions suggested by the Ontario Health Record Association and ensuring The Coroners Act conform with any new legislation.

21. THAT NO LEGISLATION BE ENACTED THAT WOULD REQUIRE HOSPITALS OR HEALTH CARE FACILITIES, THE EMPLOYEES OF HOSPITALS OR HEALTH CARE FACILITIES, PHYSICIANS OR OTHER HEALTH CARE WORKERS TO REPORT TO THE POLICE GUNSHOT WOUNDS, STAB WOUNDS OR ANY OTHER INJURIES INDICATING THE COMMISSION OF A CRIME OR A STATEMENT BY A PATIENT OF ANY INTENTION TO COMMIT A CRIME.

Comment:

CPSO agrees with the recommendation.

OMA suggests the recommendation reveals the conflicts that physicians face between obligations to the patient and obligations to security. OMA further points out that there are already some actions which are reportable, such as child abuse, which could come under "any other injuries". OMA also feels the term "crime" needs to be defined.

OHA agrees with the recommendation.

OCHRA/OHRA agree with the recommendation.

Ontario Physiotherapy Association comments they are under the impression that present laws require that we do this pointing out that even teachers are required to report suspected child abuse. They question if we are creating laws to serve the public or criminals.

Recommendation:

Implement the recommendation ensuring no conflict with The Child Welfare Act.

22. THAT THE RELEVANT REGULATIONS UNDER THE HEALTH DISCIPLINES ACT, 1974 BE AMENDED TO PROVIDE THAT, WHERE A HEALTH CARE PROVIDER WHOSE PROFESSION FALLS WITHIN THE HEALTH DISCIPLINES ACT, 1974 AND WHO IS NOT WORKING IN A HEALTH CARE FACILITY OR UNDER THE DIRECTION OF A PHYSICIAN HAS REASONABLE CAUSE TO BELIEVE THAT A PATIENT IS IN SUCH MENTAL OR EMOTIONAL CONDITION AS TO BE DANGEROUS TO HIMSELF OR THE PERSON OF ANOTHER OR OTHERS AND THAT DISCLOSURE OF INFORMATION ABOUT THE PATIENT IS NECESSARY TO PREVENT THE THREATENED DANGER, THE HEALTH CARE PROVIDER MAY DISCLOSE SUCH INFORMATION TO THE POLICE OR OTHERS WITHOUT THE CONSENT OF THE PATIENT. DISCLOSURE MADE UNDER THAT REASONABLE BELIEF SHALL NOT AMOUNT TO PROFESSIONAL MISCONDUCT.

Comment:

CPSO supports the principle but recommends that O. Reg. 577/75 Section 26-21 be amended by adding after "required to do so by law" - "except where there is reason to believe that the disclosure of information given in confidence would prevent an act of violence or injury to the patient or to another person."

OMA would support the recommendation if the disclosure of information is done in consultation with the attending physician and if there is clarification of to whom the information would be disclosed.

OHA supports the recommendation, but feels it needs to be expanded to include health care providers whose profession does not fall within The Health Disciplines Act, 1974 such as social workers, physiotherapists.

The Toronto General Hospital expresses some concern the recommendation could give undue powers to and potential misuse by personnel who may no longer be employed in their professional status.

College of Nurses of Ontario supports the recommendation as it clarifies the rights and obligations of health care providers in areas which can create professional and ethical dilemmas.

Ontario Physiotherapy Association agrees with the recommendation.

The Ontario Psychologicial Association comments that psychologists are not covered by the Health Disciplines Act, although Mr. Justice Krever in his report points out clinical psychologists are health care providers, no distinction should be made between the health information generated in the course of providing psychological services and that pertaining to physical health and that they should be subject to the same obligation of confidentiality as other health care providers and should be subject to the same exceptions. They wish psychologists and the Psychologists' Registration Act to be considered with other health professionals and the Health Disciplines Act in determining how to implement Mr. Justice Krever's recommendations.

Recommendation:

Implement the recommendation taking into consideration the concerns expressed by various respondents. The recommendation should apply to all health professionals and care should be exercised to ensure uniformity in regulations under other statutes regulating health professionals whose professions fall within statutes, other than The Health Disciplines Act, 1974, such as the Psychologists Registration Act.

23. THAT LEGISLATION BE ENACTED TO PROVIDE THAT, WHEN A SENIOR OFFICIAL OF A HOSPITAL OR HEALTH CARE FACILITY HAS REASONABLE CAUSE TO BELIEVE THAT A PATIENT IS IN SUCH MENTAL OR EMOTIONAL CONDITION TO BE DANGEROUS TO HIMSELF OR THE PERSON OF ANOTHER, OR OTHERS, AND THAT DISCLOSURE OF INFORMATION ABOUT THE CONDITION OF THE PATIENT IS NECESSARY TO PREVENT THREATENED DANGER, HE OR SHE, SPECIALLY DESIGNATED BY THE BOARD OF THE HOSPITAL, OR HEALTH CARE FACILITY, FOR THE PURPOSE, MAY DISCLOSE THAT INFORMATION WITHOUT THE CONSENT OF THE PATIENT.

Comment:

CPSO supports the principle, but recommends that O. Reg. 577/75, Section 26-27 be amended. (See comments re recommendation 22 above).

OHA agrees and supports the recommendation, but feels it should apply to a physician as well as a "senior official of a hospital or health care facility."

Toronto General Hospital feels that the onus should be on a physician rather than a "senior official of a hospital or health care facility."

OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

24. THAT WHEN A SENIOR OFFICIAL OF A HOSPITAL OR HEALTH CARE FACILITY - OR A PHYSICIAN BELIEVES, ON REASONALBE GROUNDS, THAT A PATIENT HAS BEEN A VICTIM OR THE PERPETRATOR OF A CRIME, HE OR SHE MAY SO INFORM THE POLICE WITHOUT THE PATIENT'S AUTHORIZATION.

Comment:

CPSO agrees with the recommendation.

OMA does not see how this could be placed in legislation, notes that disclosure is permissive, rather than mandatory, leaving it to the judgment of the individual. OMA also suggests the tenor of this recommendation appears contradictory to recommendation 21 which recommends no legislation be enacted that would require reporting.

OHA agrees and supports the recommendation.

OCHRA/OHRA agree with the recommendation.

Ontario Physiotherapy Association agrees with the recommendation. See comments of Ont. Psych. Ass'n to recommendation 13.

Recommendation:

Implement the recommendation.

25. (1) THAT ADMINISTRATORS OF HOSPITALS AND HEALTH CARE FACILITIES, OR SENIOR OFFICIALS DESIGNATED BY THEM IN WRITING, BE THE ONLY PERSONS PERMITTED TO DISCLOSE HEALTH INFORMATION FROM THE RECORDS OF THEIR RESPECTIVE FACILITIES, OR IN THE POSSESSION OF EMPLOYEES OF THESE FACILITIES, TO POLICE WITHOUT PATIENT AUTHORIZATION.

(2) THAT, BEFORE DISCLOSURE IS MADE, STEPS BE TAKEN TO ENSURE THAT THE PERSON SEEKING THE INFORMATION IS, IN FACT, A POLICE OFFICER BY REQUIRING THE POLICE OFFICER TO ATTEND PERSONALLY AT THE HOSPITAL OR HEALTH CARE FACILITY, OR BY USING A CALL-BACK SYSTEM.

(3) THAT A LOG BE MAINTAINED AT EVERY HOSPITAL AND HEALTH CARE FACILITY, TO RECORD THE DATE OF THE REQUEST, THE NAME OF THE ENQUIRER, HIS OR HER POLICE FORCE, HIS OR HER BADGE NUMBER, THE PATIENT ABOUT WHOM THE INFORMATION WAS SOUGHT, THE PURPOSE FOR WHICH THE INFORMATION WAS SOUGHT, WHETHER INFORMATION WAS PROVIDED OR DENIED AND THE SUBSTANCE OF THE INFORMATION PROVIDED.

Comment:

CPSO agrees and supports parts (1) and (2) but feels part (3) is directed to matters outside its jurisdiction.

With respect to part (1) of this recommendation, OMA feels the recommendation should include a provision for the knowledge and concurrence of the attending physician and that at the very least the attending physician should be informed. In the event the attending physician is not available the hospital should deputize another physician such as chief of medical staff to act for him. OMA agrees with parts (2) and (3) of the recommendation. OHA agrees with parts (1) and (2) of the recommendation but would prefer part (3) to be discretionary.

Toronto General Hospital also feels that the attending physician should be notified of the nature and extent of the disclosure. OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

26. THAT EVERY HOSPITAL AND HEALTH CARE FACILITY IN ONTARIO BE REQUIRED TO REPORT YEARLY TO THE MINISTRY OF HEALTH THE NUMBER OF POLICE ATTENDANCES FOR CONFIDENTIAL INFORMATION, IN GENERAL TERMS, THE CIRCUMSTANCES IN WHICH THE INFORMATION WAS SOUGHT, THE NUMBER OF OCCASIONS ON WHICH INFORMATION WAS GIVEN AND THE NUMBER OF OCCASIONS IN WHICH IT WAS REFUSED. THE MINISTER OF HEALTH SHOULD MAKE THESE STATISTICS PUBLIC.

Comment:

OMA agrees and supports this recommendation.

OHA considers it unnecessary bureaucracy.

Sudbury Memorial Hospital feels the hospital or health care facility should keep records, but questions the need for reporting and public disclosure unless requested.

OCHRA/OHRA comment that the purpose of this reporting, other than making the statistics public, should be clarified. If the purpose is to outline problems in this area, resolutions of such problems should be at the local level.

Recommendation:

Implement the recommendation.

27. THAT HOSPITALS, HEALTH CARE FACILITIES AND INDIVIDUAL HEALTH CARE PROVIDERS NOT BE OBLIGED TO RECORD IN THEIR PATIENTS' RECORDS THE FACT OF ANY CONTACT WITH THE POLICE OR THE SUBSTANCE OF ANY INFORMATION GIVEN TO THE POLICE IN CASES IN WHICH PATIENT INFORMATION HAS BEEN GIVEN TO THE POLICE WITHOUT AUTHORIZATION.

Comment:

CPSO agrees with the recommendation.

OMA considers the recommendation to be contradictory to the philosophy of full patient access.

OHA agrees with the recommendation.

See OCHRA/OHRA comment to recommendation 13.

Ontario Physiotherapy Association disagrees with the recommendation commenting that all such reporting should be recorded otherwise the recommendation may become a loophole for breach of confidentiality.

Recommendation:

Implement the recommendation but ensure no conflict with recommendations 13 and 58.

28. THAT ON RECEIPT OF A SUBPOENA OR ANY OTHER PROCESS REQUIRING AN INDIVIDUAL HEALTH CARE PROVIDER, OR THE CUSTODIAN OF A MEDICAL RECORD IN A HOSPITAL OR HEALTH CARE FACILITY, TO ATTEND TO GIVE EVIDENCE, HE OR SHE NOT DISCLOSE HEALTH INFORMATION, WITHOUT THE PATIENTS' AUTHORIZATION, IN ADVANCE OF, OR IN PREPARATION FOR, HIS OR HER ATTENDANCE AS A WITNESS IN THE PROCEEDING.

Comment:

CPSO agrees with the recommendation.

OMA agrees with the recommendation.

OHA agrees as long as it does not prevent hospital or physician(s) from reviewing records with their solicitors.

Toronto General Hospital supports OHA position.

Sudbury Memorial Hospital supports and suggests - Ontario Law Society, should be requested to advise their members and regulations should specify that the records are to be given only to the Judge.

College of Nurses of Ontario supports in principle, but points out that if this recommendation is enacted, then recommendation 74 must also be enacted to give that College access to records to carry out its responsibilities to investigate and conduct discipline hearings into the conduct of its registrants.

The Ontario Association for the Mentally Retarded believes this recommendation would be of assistance to associations such as theirs.

OCHRA/OHRA comment this clarifies the current practice in the health record field.

Ontario Physiotherapy Association comments this is already in effect for private practitioners in physiotherapy.

Recommendation:

Implement the recommendations with due regard to the concerns of the OHA and the College of Nurses of Ontario.

29. THAT THE RESPONSIBILITY FOR THE REGULATION OF THE PRIVATE INVESTIGATION INDUSTRY REMAIN WITH THE REGISTRATION BRANCH OF THE ONTARIO PROVINCIAL POLICE.

Comment: Nil.

Recommendation:

Subject to comment and recommendation of Consumer and Commercial Relations.

30. THAT THE ONTARIO PROVINCIAL POLICE ALLOCATE SUFFICIENT MANPOWER AND EXPERTISE TO REGULATE THE PRIVATE INVESTIGATION INDUSTRY PROPERLY.

Comment:

Ontario Physiotherapy Association questions who is to decide what constitutes sufficient manpower and expertise.

Recommendation:

Subject to comment and recommendation of Consumer and Commercial Relations.

31. THAT THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT BE AMENDED TO ALLOW THE REGISTRATION BRANCH TO INSPECT INVESTIGATORS' RECORDS AND REPORTS EVEN IN THE ABSENCE OF A COMPLAINT.

Comment: Nil.

Recommendation:

Subject to comment and recommendation of Consumer and Commercial Relations.

32. THAT THE MEMBERS OF THE REGISTRATION BRANCH BE UNDER AN OBLIGATION OF CONFIDENTIALITY WITH RESPECT TO THE CONTENTS OF THE INVESTIGATORS' FILES INSPECTED, AND BE REQUIRED TO REFRAIN FROM DISCLOSING ANY INFORMATION ACQUIRED DURING INSPECTION OF INVESTIGATORS' FILES TO OFFICERS IN OTHER BRANCHES OF THE OPP OR OFFICERS OF ANY OTHER FORCE, AND TO USE THIS INFORMATION ONLY FOR THE PURPOSES OF REGISTRATION HEARINGS OR FOR THE PROSECUTION OF ANY BREACHES OF THE LAW.

Comment: Nil.

Recommendation:

Subject to comment and recommendation of Consumer and Commercial Relations.

33. THAT PRIVATE INVESTIGATORS HAVE AN OBLIGATION TO MAINTAIN BOOKS, RECORDS AND COPIES OF ALL REPORTS. THIS OBLIGATION SHOULD NOT APPLY IN SITUATIONS IN WHICH INVESTIGATORS ARE RETAINED BY LAWYERS ACTING FOR THE DEFENCE IN CRIMINAL OR QUASI-CRIMINAL MATTERS. IN THOSE CIRCUMSTANCES, THE DEFENCE LAWYER INVOLVED SHOULD BE PERMITTED TO TAKE CUSTODY OF ALL NOTES, RECORDS AND REPORTS RELATING TO THE CASE.

Comment: Nil.

Recommendation:

Subject to comment and recommendation of Consumer and Commercial Relations.

34. THAT IN THE EVENT THAT THE LEGAL BRANCH OF THE MINISTRY OF HEALTH DESIRES ANOTHER LEGAL OPINION WITH RESPECT TO THE VALIDITY OF A SEARCH WARRANT OR ANY OTHER PROCESS DIRECTED TO PROVINCIAL PSYCHIATRIC FACILITIES, THE OPINION BE SOUGHT FROM A NON-GOVERNMENT LAWYER RATHER THAN FROM THE CROWN OFFICE.

Comment: OMA agrees.

Recommendation:

Subject to comment and recommendation of Ministry of Health Legal Branch.

35. THAT ALL HOSPITALS AND HEALTH CARE FACILITIES KEEP A RECORD OF ALL SEARCH WARRANTS EXECUTED AGAINST THEM.

Comment:

OMA and OHA both agree with the recommendation OCHRA/OHRA comment, that a record of all such search warrants should be logged in a central registry within the institution.

Recommendation:

Implement the recommendation.

Chapter 18: Computer-Supported Systems in Health: The Threat to Privacy

General Comment:

The Ontario Cancer Treatment and Research Foundation is concerned that many of the security measures suggested in Chapter 18 to protect the security of computer supported operations, are very costly for small installations and that minimal requirements may be impracticable for many of the Foundations' small computer installations such as those used for radiotherapy treatment planning and for research. In addition, some of the recommendations would be detrimental to online patient care management systems such as patient scheduling in either clinics or hospitals where patient identifying information is an integral part of interaction with the computer.

It would be difficult to introduce the suggested special and ultrasecure precautions associated with the recommendation that personal identification data be kept separate from other data.

The Foundation is concerned that Recommendation 37 regarding the names of the medical data bases and the files they included would be expensive to maintain and public access to this file might endanger the security of such health data bases.

The Lambton District Health Council responding on behalf of the five district health councils in southwestern Ontario (Essex County, Grey/Bruce/Kent County, Lambton and Thames Valley) comment that their interests centre on Chapter 18, recommendations 36-42. Although the health care system is moving rapidly to computer supported medical and health data systems much of this data still is and will continue to be, accumulated in other ways. They suggest therefore that measures to secure confidential information in computer-supported medical and health data systems which do not inhibit the availability of needed medical and health data for planning functions apply equally to all other data systems.

Ontario Physiotherapy Association considers the problems of computer-supported systems in health and the threat to privacy to be very important in the light of the rapidly advancing technology.

General Recommendation:

It is understood that the Hospital Medical Records Institute has been reviewing the recommendations set out in Chapter 18 of the Report at the request of the Ontario Hospital Association. These comments are not yet available, but should be taken into consideration, if any are received, when considering the implementation of the recommendations set out in this chapter.

Similarly the concerns of the Ontario Cancer Treatment and Research Foundation should be considered, and advice should be sought from persons expert in the use of computer-supported data systems before reaching a final decision to implement Recommendations 36-44.

36. THAT, BEFORE THE ESTABLISHMENT OF ANY MEDICAL DATA BASE, THE PERSON OR AGENCY WHO WILL BE RESPONSIBLE FOR PROTECTING THE CONFIDENTIALITY OF THE INFORMATION CARRY OUT THE FOLLOWING REQUIREMENTS:

    (A) STATE THE PURPOSE FOR WHICH THE DATA ARE BEING COLLECTED, INDICATE THE CLASS OR CLASSES OF PATIENTS IN RESPECT OF WHOM IT IS BEING COLLECTED AND LIST ALL DATA ITEMS TO BE INCLUDED.

    (B) SET OUT THE QUALITY CONTROL PROCEDURES WHICH WILL ENSURE THAT DATA ARE ACCURATELY COLLECTED AND PROPERLY LINKED TO THE CORRECT PATIENT.

    (C) SET OUT ALL PHYSICAL AND SOFTWARE SECURITY PROCEDURES TO PROTECT THE DATA FROM UNAUTHORIZED ACCESS OR DESTRUCTION. SECURITY SHOULD BE REQUIRED TO MEET A STANDARD CORRESPONDING TO THE SENSITIVITY OF THE INFORMATION STORED.

    (D) DESIGNATE THE PERSON DIRECTLY RESPONSIBLE FOR PROTECTING THE CONFIDENTIALITY OF THE INFORMATION, TO WHOM VIOLATIONS OF ANY INDIVIDUALS' PRIVACY ARE TO BE REPORTED.

    (E) SHOW THAT ALL PERSONS WHO HAVE ACCESS TO DATA HAVE BEEN INFORMED OF THEIR RESPONSIBILITIES FOR CONFIDENTIALITY AND THAT A SYSTEM EXISTS FOR PROTECTING THE CONFIDENTIALITY OF THE DATA.

    (F) SPECIFY TO WHOM AND WHERE SUCH DATA MAY BE TRANSMITTED, CIRCULATED OR OTHERWISE GIVEN.

    (G) DEFINE THE SPECIAL AND ULTRA-SECURE PROCEDURES ASSOCIATED WITH PERSONAL IDENTIFICATION DATA AND THE METHODS BY WHICH IT IS GUARANTEED TO BE KEPT SEPARATE FROM OTHER DATA.

Comment:

CPSO disagrees feeling the recommendation is stated in broad terms and could include records kept in physicians' offices.

OMA supports the recommendation. Still under review by OHA (HMRI).

OCHRA/OHRA agree with the recommendation.

Ontario Pharmacists' Association comments in general about recommendations re computerized health records and record systems. Community pharmacists are making ever increasing use of electronic data processing to assist in coping with increasing paper burden workloads, such as maintaining medication profiles and billing third party payment agencies. The Association cautions against changes that could negate the benefits that have recurred as a result of pharmacy's utilization of these systems.

Recommendation:

Implement the recommendation subject to advice and recommendation of Computer Specialists.

37. THAT THE NAMES OF MEDICAL DATA BASES AND THE FILES THEY INCLUDE, AN ITEMIZATION OF THE CONTENTS OF THE FILES, AND THE NAMES OF THOSE RESPONSIBLE FOR THEIR MAINTENANCE AND SAFEKEEPING BE CENTRALLY REGISTERED IN A DATA BASE, PUBLIC ACCESS TO WHICH IS AVAILABLE.

Comment:

CPSO disagrees - considers the recommendation is impractical and is opposed to public access.

OMA supports the recommendation. Still under review by OHA (HMRI).

The Ontario Cancer Treatment and Research Foundation is concerned that the names of the medical data bases and the files they include would be expensive to maintain and public access to this file might endanger the security of such health data bases.

OCHRA/OHRA comment that clarification is needed so that only an outline of major headings, rather than an itemization of contents of files, is included. There should be no individual identification of patients.

Recommendation:

Further advice should be obtained from computer specialists in making a decision whether or not to implement this recommendation.

38. THAT A SET OF MINIMUM GUIDELINES BE ESTABLISHED FOR THE SECURITY OF SPECIFIC KINDS OF MEDICAL DATA BASE SYSTEMS. (THERE MAY BE SEVERAL CLASSES OF SYSTEMS, SUCH AS DATA BASES COLLECTED AND KEPT WITHIN AN INSTITUTION, MULTI-INSTITUTIONAL DATA BASES, AND PROVINCE-WIDE OR NATION-WIDE DATA BASES.) DATA BASES MAY ALSO BE CLASSIFIED ACCORDING TO THE SENSITIVITY OF THEIR DATA, THE SIZE OF THE DATA BASE AND THE POTENTIAL FOR LINKAGE OF MULTIPLE DATA SETS OF DIFFERENT TYPES. THE MINIMUM GUIDELINES SHOULD SPECIFY THE MINIMUM PHYSICAL SECURITY FOR ACCESS TO THE SYSTEM AND ITS TERMINALS, THE KINDS OF MINIMUM SOFTWARE SECURITY IMPLEMENTED IN THE DATA BASE SOFTWARE, AND THE METHODS OF BACKUP AND DUPLICATE LOGGING IN ORDER TO PROTECT THE DATA BASE FROM DELIBERATE OR INADVERTENT DESTRUCTION.

Comment:

CPSO and OMA agree with the recommendation. Still under review by OHA (HMRI).

Ontario Cancer Institute and Research Foundation would like the Foundation and the Ontario Cancer Institute incorporating the Princess Margaret Hospital to be regarded as a single health care facility - with respect to medical records and is concerned that the security measures proposed for computer-supported systems in health would be costly for small installations.

OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

39. THAT ANY DATA ABOUT A GIVEN PATIENT KEPT IN A MEDICAL DATA BASE USED IN PATIENT CARE BE AVAILABLE FOR REVIEW BY THE PATIENT ON REQUEST. THERE SHOULD BE A MECHANISM FOR CORRECTING DATA OR AT LEAST INDICATING THAT THE PATIENT AND THE RECEIVER OF DATA DIFFER ABOUT A GIVEN ITEM.

Comment:

CPSO opposed to patient access to medical records. Patient should receive a copy of report sent to a third party on his/her authorization except where this would not be in the patient's best interest.

OMA questions what is meant by "data base" OMA points out there may be information that could be harmful to patient. OMA points out that reports of laboratory tests and radiological examinations, personal observation and opinions should not be open to change.

Still under review by OHA (HMRI). Toronto General Hospital supports principle but feels recommendation should be replaced with Recommendation 82 as amended. Sudbury Memorial Hospital supports principle but urges no correcting of data, but an indication of difference and access only under medical supervision. OCHRA/OHRA agree with the recommendation.

Recommendation:

There should be further consultation with physician groups to consider all the implications of the patient access to his own records before a decision to implement this recommendation.

40. THAT PROCEDURES FOR THE PURGING OF DATA, THE DESTRUCTION OF MEDIA AND THE KEEPING OF COPIES BE ESTABLISHED BOTH FOR LONG-TERM SYSTEMS AND FOR SYSTEMS WHICH EXIST TRANSIENTLY IN SUPPORT OF LIMITED-TERM PROJECTS.

Comment:

CPSO agrees with recommendation. OMA agrees with the recommendation. Still under review by OHA (HMRI). OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

41. THAT AN OMBUDSMAN OF MEDICAL DATA BASES OR THE EQUIVALENT BE APPOINTED TO ACT AS AN OVERSEER ENSURING THAT THE RIGHTS OF THE INDIVIDUALS ARE PROTECTED, THAT GRIEVANCES CAN BE REDRESSED, THAT VIOLATIONS CAN BE DETECTED AND THAT THE GUIDELINES ARE KEPT UP-TO-DATE.

Comment:

CPSO disagrees considering the recommendation impactical and recommends reliance on guidelines set out in Recommendation 38.

OMA questions the need for such an appointment and considers closer observation in the collection and handling of medical information may suffice.

Still under review by OHA (HMRI).

Sudbury Memorial Hospital suggests such an ombudsman should have a medical background. OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

42. THAT THERE BE:

    (A) A REGULAR REVIEW OF ALL SYSTEMS AND A CONSTANT UPDATING OF THE LIST OF RESPONSIBLE PERSONNEL AND THE CONTENTS OF DATA FILES;

    (B) A MEANS OF ENSURING THAT PROBLEMS ARE CORRECTED AND THAT VIOLATIONS OF PATIENT PRIVACY ARE ADDRESSED;

    (C) A MECHANISM FOR THE UPDATING OF PROCEDURES WITH NEW TECHNOLOGIES; AND

    (D) A MEANS OF PUBLISHING DOCUMENTED VIOLATIONS, IMPORTANT POTENTIAL VIOLATIONS, OR SUSPECTED VIOLATIONS OF COMPUTER-SYSTEM SECURITY WHENEVER THEY ARE DETECTED.

Comment:

CPSO disagrees with the recommendation as impractical and costly. Requirement to correct problems and for updating procedures are or should be included in the guidelines set out in Recommendation 38. OMA supports a regular review mechanism. Still under review by OHA (HMRI). Sudbury Memorial Hospital queries how and where reports (42(d)) would be published.

OCHRA/OHRA comment that the regular review of all systems should be at the in-house level.

Recommendation:

Implement the recommendation.

43. THAT THE PUBLIC HOSPITALS ACT OR A REGULATION MADE THEREUNDER, OR ANY SUCCESSIVE LEGISLATION TO THE ACT THAT MAY BE PASSED, EXPRESSLY AUTHORIZE THE PRACTICE OF RELEASING PATIENT INFORMATION TO THE HOSPITAL MEDICAL RECORDS INSTITUTE FOR DATA PROCESSING.

Comment:

OMA supports pointing out that the Ministry of Health is currently requesting the collection and submission of information to HMRI and the Ministry that is not allowed by the present legislation.

Still under review by OHA (HMRI).

OCHRA/OHRA comment this recommendation is necessary to clarify present practice which is covered by no legal authority.

Recommendation:

Implement the recommendation.

44. THAT PRINT-OUTS RECEIVED BY HOSPITALS FROM THE HOSPITAL MEDICAL RECORDS INSTITUTE CONTAINING INDIVIDUALLY IDENTIFIABLE MATERIAL BE SUBJECT TO THE SAME CONFIDENTIALITY, SECURITY AND ACCESS PROVISIONS TO WHICH HOSPITAL MEDICAL RECORDS ARE SUBJECT. IN THE CASE OF PURELY STATISTICAL REPORTS, LESS RESTRICTIVE ACCESS MAY BE JUSTIFIABLE, SO LONG AS INFORMATION ABOUT INDIVIDUALS CANNOT BE IDENTIFIED EVEN INDIRECTLY.

Comment:

CPSO agrees with the recommendation. OMA agrees with the recommendation. Still under review by OHA (HMRI). OCHRA/OHRA agree with the recommendation.

The Ontario Cancer Treatment and Research Foundation is concerned that any recommendations regarding HMRI should authorize the transmission to the Foundation by the Ministry of Health of the OHIP 106D File (H16 File) records of patients with a diagnosis of cancer, as is presently being done, in order that the Foundation may maintain the completeness and accuracy of the Ontario Cancer Registry for epidemiological analysis and research, facilities and treatment service planning resource utilization and allocation, program evaluation and management of health care costs.

Recommendation:

Implement the recommendation with due regard to the concern of the Ontario Cancer Treatment and Research Foundation that the free flow of information for purpose of the Ontario Cancer Registry and the ongoing care of cancer patients not be obstructed.

Chapter 21: Hospital and other Health Care Institutions

General Comments:

The Ontario Chapter, College of Family Physicians of Canada agrees with the general intention of Recommendations 45-78 in Chapter 21 but expresses concern that the rigid application of these in the form of regulations could lead to a serious interruption of the flow of information which ensures the quality of care patients receive, pointing out that time is frequently of the essence and, if information cannot be released expeditiously from hospital to attending physicians in other than life-threatening circumstances, it could be disastrous.

The Ontario Cancer Treatment and Research Foundation is concerned that the need for patient consent for release of patient information could impede the continuing care of cancer patients which requires the free flow of information over a varying (often prolonged) period of time to attending physicians, hospitals and other health care facilities.

The Association of Nursing Directors and Supervisors of Ontario Official Health Agencies is concerned about the need to obtain repeated written consents for the sharing of information amongst community health and social agencies, pointing out the burden placed upon public health nurses, who frequently have to fulfill a coordinating role in the follow-up care of patients following discharge from a health care facility.

General Recommendation:

In considering the recommendations set out in Chapter 21 of the Report, the best interests of patients should be the primary consideration. While one should attempt to protect confidentiality, legislation and regulations should not interfere with the prompt and proper flow of health information between various health care workers, health care facilities and community health and social agencies necessary for the continuity of health care. The concerns of the Ontario Cancer Treatment and Research Foundation and of the Association of Nursing Directors and Supervisors of Ontario Official Health Agencies should be considered.

45. THAT ALL FACILITIES OR INSTITUTIONS LEGALLY EMPOWERED TO PROVIDE HEALTH-CARE SERVICES AND MAINTAINING PATIENT RECORDS BE REGULATED BY THE SAME OR SIMILAR PROVISIONS GOVERNING THE CONFIDENTIALITY OF PATIENT INFORMATION.

Comment:

CPSO agrees with the recommendation. OMA supports the establishment of regulations that would pertain to all health records no matter where located and which would correct inconsistencies between various acts.

OHA agrees with the recommendation.

The Ontario Association for the Mentally Retarded points out that while not providers of health services they are required to maintain files in which there is substantial health information and that legislation governing the confidentiality of information should apply to them. Programs such as theirs, are almost entirely under the Ministry of Community and Social Services rather than the Ministry of Health. The two Ministries should be consistent in their approach to and regulation of confidentiality. A comprehensive statute would be desirable.

The Workmen's Compensation Board (WCB) agrees with the recommendation. OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the regulation in consultation with the Ministry of Community and Social Services to ensure consistency in regulations governing health and social agencies operated by the two Ministries.

46. THAT LEGISLATION PROTECTING PATIENT INFORMATION IN HOSPITALS AND HEALTH-CARE FACILITIES BE MADE APPLICABLE TO ANY KNOWLEDGE OR INFORMATION PERTAINING TO THE HEALTH, CARE, ASSESSMENT, EXAMINATION OR TREATMENT OF THE PATIENT, UNLESS THE KNOWLEDGE OR INFORMATION IS IN A NON-IDENTIFIABLE FORM.

Comment:

CPSO, OMA, OHA, WCB, OCHRA/OHRA all agree with the recommendation.

Recommendation:

Implement the recommendation.

47. THAT LEGISLATION GOVERNING THE CONFIDENTIAL INFORMATION MAINTAINED BY HOSPITALS AND HEALTH-CARE FACILITIES REQUIRE EACH HOSPITAL OR HEALTH-CARE FACILITY TO DEVELOP ITS OWN POLICIES AND PROCEDURES, COMPATIBLE WITH THE LEGISLATION, TO REGULATE THE COLLECTION, RETENTION, STORAGE, SECURITY, ACCESS, RELEASE AND DESTRUCTION OF ALL CONFIDENTIAL PATIENT INFORMATION.

Comment:

CPSO, OMA, OHA and WCB, all agree with the recommendation. Toronto General Hospital expresses concern about additional costs for shredding.

OCHRA/OHRA agree with the recommendation and further recommend the Code of Practice of the Canadian Health Record Association and the Guidelines of the Canadian Organization for the advancement of Computers and Health as excellent reference sources.

Ontario Physiotherapy Association feels this may create some confusion for private practitioners of physiotheraphy and that specific guidelines should be issued to health care facilities.

Recommendation:

Implement the recommendation. Each hospital or health care facility has a different situation and should develop its own policies and procedures which must be consistent with legislation, to conform to its own needs. It is suggested, however, that the OHA can continue as it has done in the past to assist hospitals and health care facilities by the development of guidelines and prototype policies/ procedures to guide them in developing individual policies and procedures. Additionally, facilities could use the reference source suggested by the Ontario Health Record Association.

48. THAT LEGISLATION REQUIRE THE ADMINISTRATOR OF EVERY HOSPITAL TO APPOINT OR DESIGNATE AN INFORMATION MANAGER, TO BE RESPONSIBLE FOR IMPLEMENTING AND COORDINATING THE POLICIES AND PROCEDURES FOR MANAGEMENT OF ALL PATIENT INFORMATION IN THE HOSPITAL. IN THE ABSENCE OF SUCH AN APPOINTMENT, THE RESPONSIBILITIES AND DUTIES OF INFORMATION MANAGER SHOULD RESIDE IN THE ADMINISTRATOR.

Comment:

CPSO agrees with the recommendation. OMA supports the principle, but feels it may be difficult to implement and suggests it should be a principle towards which each hospital should strive rather than being placed in legislation. OHA agrees but suggest it should be applicable only to confidential patient information.

Toronto General Hospital expresses concern about the additional cost of a full time position.

WCB agrees but feels where the hospital has a medical director, this person should be responsible for the appointment.

OCHRA/OHRA agree with the recommendation and feel strongly that the position of information officer should be filled by health record personnel on the basis that their professional training has provided the necessary expertise and that their continued involvement in processing the majority of day-to-day requests and in setting policies and procedures for release of information within the institution gives them the experience required for such a position. They also point out that centralizing the management of patient information may require an increase in the number of health record personnel.

Ontario Physiotherapy Association feels this role is already being filled by administrators and heads of medical records departments in health care facilities.

Recommendation:

Implement the recommendation which should be applicable to all other health care facilities in addition to hospitals, leaving it to each individual facility to decide who should be appointed or designated.

49. THAT HOSPITALS AND HEALTH-CARE FACILITIES:

    (A) INFORM ALL EMPLOYEES OF THEIR INDIVIDUAL RESPONSIBILITY TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION;

    (B) INSTRUCT ALL EMPLOYEES IN THE INSTITUTION'S WRITTEN CONFIDENTIALITY POLICIES; AND

    (C) INFORM ALL EMPLOYEES OF THE PENALTIES FOR THE VIOLATION OF THESE POLICIES.

Comment:

CPSO agrees with the recommendation. OMA supports the recommendation and believes instruction should be part of in-service training for members of medical and nursing staff, part of orientation process for all hospital employees including auxiliary members and volunteers.

OHA agrees with recommendation.

Toronto General Hospital is concerned the recommendation could frustrate the vital need for an easy flow of information between health care professionals.

WCB agrees with the recommendation.

OCHRA/OHRA agree with the recommendation and additionally recommend periodic refresher courses, after the initial orientation, to update personnel.

Ontario Physiotherapy Association agrees with the recommendation but feels that in Section (c) specific penalties should be set out which will be consistent throughout the province.

Recommendation:

Implement the recommendation ensuring it applies to Board members, medical staff, auxiliary members and volunteers as well as employees.

50. THAT LEGISLATION GOVERNING HOSPITALS AND HEALTH-CARE FACILITIES IMPOSE ON ALL EMPLOYEES AND OTHER PERSONS WORKING THEREIN, THE DUTY NOT TO RELEASE PATIENT INFORMATION WITHOUT THE CONSENT OF THE PATIENT EXCEPT WHEN REQUIRED OR PERMITTED BY LAW.

Comment:

CPSO agrees with the recommendation subject to exception where there is reason to believe that the disclosure of information given in confidence would prevent an act of violence or injury to the patient or to another person (see comment under Recommendation 22).

OMA supports the recommendation and feels it should apply to members of hospital auxiliaries, public health nurses, home care workers, etc. as well as hospital and health care facility employees.

OHA agrees with the recommendation.

Ontario Cancer Treatment and Research Foundation recommends that the provisions of Section 7 of the Cancer Act RSO 1980, Chapter 57 remain unchanged to ensure the receipt of all health care records necessary for the maintenance of the Ontario Cancer Registry. The Ontario Cancer Treatment and Research Foundation is also concerned that recommendations 50, 55, 56, 59, 65, 67, 68 and 69 do not impede the continuing care of cancer patients which requires the flow of information over a varying period of time to physicians, hospital and other health care facilities frequently in different centres.

WCB agrees with the recommendation. OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation and ensure any legislation provides for the concern of the Ontario Cancer Treatment and Research Foundation.

51. THAT LEGISLATION PROVIDE THAT A HOSPITAL OR HEALTH-CARE FACILITY MAY COLLECT ONLY INFORMATION REQUIRED FOR THE CARE, ASSESSMENT, EXAMINATION OR TREATMENT OF THE PATIENT UNLESS HE OR SHE CONSENTS TO THE COLLECTION OF INFORMATION FOR OTHER PURPOSES.

Comment:

CPSO agrees with the recommendation. OMA supports the recommendation and feels it would assist in reducing the amount of useless information, suggests all persons collecting or requesting the collection of information, should be required to justify the need.

OHA agrees with the recommendation.

Sudbury Memorial Hospital feels it will be difficult to determine what information is required, that it will vary with each individual case and with each health care provider leaving the door open for potential lawsuits and recommends that the recommendation should be withdrawn.

WCB agrees with the recommendation.

OCHRA/OHRA agree with the recommendation. Ontario Physiotherapy Association questions for what other purpose would information be collected.

Recommendation:

Implement the recommendation with due regard to defining the "information required for the care, assessment, examination or treatment of the patient."

52. THAT THE LEGISLATION AND REGULATIONS REQUIRING HOSPITALS AND HEALTH-CARE FACILITIES TO RETAIN PATIENT-IDENTIFIABLE HEALTH-RELATED DOCUMENTS AND MATERIALS BE REVIEWED AND, WHERE NECESSARY, AMENDED, TO ENSURE THAT PATIENT INFORMATION IS RETAINED IN AN APPROPRIATE MANNER AND FOR A PERIOD WHICH IS CONSISTENT WITH MINIMUM MEDICAL AND LEGAL REQUIREMENTS.

Comment:

CPSO agrees with the recommendation. OMA supports a practical review of legislation and regulations including various statutes of limitations governing the retention of patient-identifiable health-related documents and materials and take the review into consideration in the development of any new legislation.

OHA, WCB and OCHRA/OHRA all agree with the recommendation.

Recommendation:

Implement the recommendation.

In considering recommendations 51 and 52, there might be merit in establishing multi-disciplinary task force of various experts in the field to attempt to define what information is required for the care, assessment, examination or treatment of the patient, the manner and period for which it should be retained to satisfy minimum medical and legal requirements.

53. THAT ALL HOSPITALS AND HEALTH-CARE FACILITIES MAINTAIN THEIR CONFIDENTIAL PATIENT INFORMATION IN DESIGNATED AREAS WHICH ARE PHYSICALLY SECURE, UNDER THE IMMEDIATE CONTROL OF DESIGNATED PERSONS AND NOT ACCESSIBLE TO OR AVAILABLE FOR INSPECTION BY UNAUTHORIZED PERSONS.

Comment:

CPSO, OMA, OHA, WCB and OCHRA/OHRA all agree with the recommendation.

Recommendation:

Implement the recommendation.

54. THAT HOSPITALS AND HEALTH-CARE FACILITIES:

    (A) PROVIDE FOR DESTRUCTION PROCEDURES FOR ALL TYPES OF PATIENT INFORMATION WHICH WILL RENDER THE INFORMATION COMPLETELY AND PERMANENTLY UNIDENTIFIABLE;

    (B) SAFEGUARD THE CONFIDENTIALITY OF THE INFORMATION DURING THE ENTIRE DESTRUCTION PROCESS, INCLUDING THE PERIOD IT IS AWAITING DESTRUCTION, AND WHILE BEING TRANSPORTED TO THE SITE OF DESTRUCTION;

    (C) DESTROY CONFIDENTIAL INFORMATION ACCORDING TO A WRITTEN RETENTION SCHEDULE CONSISTENT WITH THE TERMS OF LEGISLATION; AND

    (D) RECORD THE PARTICULARS OF THE DESTRUCTION IN A LOG OR BY STATUTORY DECLARATION WHERE REQUIRED BY LAW.

Comment:

CPSO and OMA agree with the recommendation.

OHA agrees but feels the recommendation should be qualified to "confidential" patient information.

WCB, OCHRA/OHRA and Ontario Physiotherapy Association all agree with the recommendation.

Recommendation:

Implement the recommendation.

55. THAT THE LEGISLATION GOVERNING THE CONFIDENTIAL INFORMATION MAINTAINED BY HOSPITALS AND HEALTH-CARE FACILITIES DESIGNATE ALL PERSONS OR GROUPS OF PERSONS WHO MAY RECEIVE OR INSPECT CONFIDENTIAL INFORMATION, AS WELL AS THE PURPOSES FOR WHICH THEIR RECEIPT OF INFORMATION IS AUTHORIZED, PROHIBITING DISCLOSURE OF OR ACCESS TO INFORMATION UNDER ALL OTHER CIRCUMSTANCES UNLESS THE PATIENT HAS CONSENTED TO THE DISCLOSURE OR IT IS MADE PURSUANT TO A SEARCH WARRANT, SUBPOENA OR ORDER OF A COURT OF COMPETENT JURISDICTION.

Comment:

CPSO agrees with the recommendation. OMA agrees with the recommentation and suggests a continuing review of the Public Hospitals Act and other legislation to bring all legislation up-to-date with the need in today's society. OHA agrees but suggests rewording "all persons or groups of persons" to read "all categories or groups of persons".

WCB agrees with the recommendation. OCHRA/OHRA agree with the recommendation. See comment of Ontario Cancer Treatment and Research Foundation to Recommendation 50.

The Canadian Pension Commission points out their need to obtain hospital records of war veterans, former members of the RCMP and certain civilians. They are concerned that the loss of time in obtaining written consent to inspect records will impose inconvenience and financial hardship on pension applicants and request that any changes in legislation or regulations will take this concern into account.

Recommendation:

Implement the recommendation with due attention to the concern of the Ontario Cancer Treatment and Research Foundation, re the receipt of records necessary for maintenance of the Ontario Cancer Registry and for the ongoing care of cancer patients.

56. THAT LEGISLATION REQUIRE HOSPITALS AND HEALTH-CARE FACILITIES, WHEN THEY EXERCISE A DISCRETION TO DISCLOSE, TO LIMIT THEIR DISCLOSURE OF CONFIDENTIAL PATIENT INFORMATION TO THE AMOUNT AND TYPE OF INFORMATION NECESSARY TO ACCOMPLISH THE PURPOSE FOR WHICH THE DISCLOSURE IS AUTHORIZED.

Comment:

CPSO agrees with the recommendation.

OMA and OHA agree with the recommendation.

WCB feels a hospital should not make decisions as to what medical information is required in order to evaluate the problem from a medical and clinical standpoint.

OCHRA/OHRA agree with the recommendation noting that other acts which conflict with this legislation such as The Workmen's Compensation Act should be made consistent.

Recommendation:

Implement the recommendation with due regard to the concern of the Ontario Cancer Treatment and Research Foundation re the Ontario Cancer Registry.

57. THAT HOSPITALS AND HEALTH-CARE FACILITIES PERMIT THE DISCLOSURE OF INFORMATION ONLY TO AUTHORIZED PERSONS WHOSE IDENTITY HAS BEEN PROPERLY VERIFIED.

Comment:

CPSO agrees with the recommendation. OMA agrees with the recommendation. OHA suggests the word "properly" should be omitted. WCB and OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

58. **THAT LEGISLATION GOVERNING HOSPITALS AND HEALTH-CARE FACILITIES REQUIRE THESE ESTABLISHMENTS TO RECORD THE PARTICULARS OF EVERY REQUEST FOR CONFIDENTIAL PATIENT INFORMATION, EXCEPT FOR THOSE MADE BY HOSPITAL STAFF MEMBERS FOR ROUTINE HOSPITAL PURPOSES. THE ACCESS TO AND DISCLOSURE OF THIS INFORMATION MUST BE LOGGED BOTH IN A CENTRAL REGISTRY AND ON THE PATIENT'S RECORD ITSELF, THE REGISTRY BEING RETAINED SEPARATELY FOR AN ADEQUATE PERIOD OF TIME.**

Comment:

CPSO disagrees feeling it would be impractical to record the particulars of every request.

OMA supports the recommendation but perceives some conflict with recommendation 27. OHA supports the recommendation and suggests "an adequate period of time" would be "a period of two years."

Sudbury Memorial Hospital also refers to the perceived conflict with recommendation 27 and also suggests the "adequate period of time" should be specified. WCB agrees with the recommendation. OCHRA/OHRA agree with the recommendation but expresses concern about possible conflict with recommendations 13 and 27.

Recommendation:

Implement the recommendation ensuring no conflict with any action taken with respect to recommendations 13 and 27 specifying the time period and with due regard to the concern of the Ontario Cancer Treatment and Research Foundation with regard to The Cancer Act.

59. **THAT, WHERE CONFIDENTIAL PATIENT INFORMATION MAINTAINED BY HOSPITALS AND HEALTH-CARE FACILITIES IS DISCLOSED WITHOUT THE CONSENT OF THE PATIENT UNDER ANY OF THE PROVISIONS IN THE LEGISLATION ALLOWING FOR SUCH DISCLOSURE, LEGISLATION REQUIRE THAT THE CONFIDENTIAL PATIENT INFORMATION SO DISCLOSED NOT BE FURTHER DISCLOSED IN IDENTIFIABLE FORM UNLESS IT IS REQUIRED BY LAW, OR UNLESS THE INFORMATION IS REQUIRED TO RELIEVE AN EMERGENCY SITUATION AFFECTING THE HEALTH OR SAFETY OF ANY PERSON.**

Comment:

CPSO agrees with the recommendation. OMA perceives some conflict with recommendation 27. OHA agrees with the recommendation.

The recommendation creates a problem for the College of Nurses of Ontario with respect to disclosure prior to a disciplinary hearing. This relates to a practice already instituted whereby the registrant or his/her solicitor is provided prior to the hearing, with copies of all relevant witness statements obtained during the course of the investigation. This is not a requirement of any legislation. It is done on receipt of an undertaking that the information provided will not be disclosed to any other person and will be used only for the purpose of preparation for the hearing. The practice is carried out in fairness to the registrant and his/her solicitor - so there will be complete disclosure on the part of the College as to the complaint and, the registrant and solicitor will not be taken by surprise at the hearing.

WCB agrees with the recommendation.

OCHRA/OHRA agree with the recommendation but wonder how it would be enforced pointing out it would be virtually impossible for the health care facility to do so. They suggest a mechanism to report any discovered cases should be implemented. See comment of Ontario Cancer Treatment and Research Foundation recommendation 50.

Recommendation:

Implement the recommendation ensuring no conflict with recommendation 27 and excluding the College of Nurses of Ontario for purposes of disciplinary hearings with a requirement it will be used only for the purpose of the hearing and not further disclosure to other persons.

60. THAT LEGISLATION PERMIT ACCESS TO CONFIDENTIAL INFORMATION WITHIN HOSPITALS AND HEALTH-CARE FACILITIES FOR THE PURPOSES OF PATIENT ASSESSMENT OR TREATMENT, INTERNAL ADMINISTRATION, AUDIT AND QUALITY-CONTROL, RESEARCH, STATISTICAL COMPILATION AND EDUCATION BUT ONLY TO THOSE STAFF MEMBERS WHOSE ACCESS HAS BEEN SPECIFICALLY APPROVED BY THE RESPECTIVE BOARDS AND FORMALLY DESIGNATED IN THEIR BY-LAWS.

Comment:

CPSO and OMA agree with the recommendation. OHA agrees but sees no need to formally designate in by-laws.

Ontario Branch, Canadian Society of Hospital Pharmacists is concerned that "staff members" include all professional staff including pharmacists.

WCB disagrees with the recommendation on the grounds that formal designation of staff members in by-laws would require ongoing, cumbersome and unnecessary revisions of the by-laws with delays and potential for disrupting the smooth flow of patient treatment.

WCB suggests an alternative course of action would be for by-laws to designate "staff categories" rather than "staff members" whose access has been specifically approved.

OCHRA/OHRA agree with the recommendation. Ontario Physiotherapy Association agrees with the recommendation.

Recommendation:

Implement the recommendation with a mechanism other than by-laws for designating staff members specifically approved by the board to have access to confidential information.

61. THAT WHERE A CLAIM IS MADE OR AN ACTION IS BROUGHT AGAINST A HOSPITAL BY A PATIENT OR FORMER PATIENT IN RESPECT OF THE CARE GIVEN TO THE PATIENT, THE HOSPITAL BOARD, THROUGH THE ADMINISTRATOR, BE PERMITTED TO DISCLOSE THE CONTENTS OF THAT PATIENT'S MEDICAL RECORD TO THE HOSPITAL'S LIABILITY INSURER AND SOLICITORS TO ENABLE THEM TO ASCERTAIN THE CIRCUMSTANCES GIVING RISE TO THE CLAIM OR ACTION AND, WHERE APPROPRIATE, DEFEND THE HOSPITAL'S POSITION.

Comment:

CPSO agrees with the recommendation and requests similar protection for physicians.

OMA agrees with the recommendation and recommends that a physician's solicitor, when a physician is involved, should also have access to this information.

OHA, WCB and OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation with provision that, when a physician or physicians are involved, their solicitors and liability insurers should similarly have access to the information to defend their positions. The recommendation should apply to other health care facilities as well as hospitals.

62. THAT A HOSPITAL BOARD'S RIGHT TO SUCH STATISTICAL AND NON-IDENTIFIABLE INFORMATION AS IT REQUIRES IN ORDER PROPERLY TO DISCHARGE ITS OBLIGATION TO GOVERN AND MANAGE ITS HOSPITAL BE GIVEN EXPRESS STATUTORY RECOGNITION.

Comment:

CPSO, OMA, OHA, WCB and OCHRA/OHRA all agree with the recommendation.

Ontario Physiotherapy Association were under the impression this already exists.

Recommendation:

Implement the recommendation which should apply to other health care facilities as well as hospitals.

63. THAT IN EXCEPTIONAL CASES, WHERE IT IS ESSENTIAL FOR THE DISCHARGE OF THEIR DUTIES, MEMBERS OF HOSPITAL BOARDS BE PERMITTED TO HAVE ACCESS TO PATIENTS' MEDICAL RECORDS. REQUESTS FOR ACCESS SHOULD BE MADE TO THE

ADMINISTRATOR, WHO MUST OBTAIN THE APPROVAL OF THE BOARD BEFORE PERMITTING THE ACCESS.

Comment:

CPSO disagrees seeing no need for direct access to patient records for board members to carry out their duties.

OMA questions the need for this recommendation.

OHA agrees with the recommendation.

Toronto General Hospital feels that access by board members should require approval of the board on the advice of the medical advisory committee.

WCB agrees with the recommendation.

OCHRA/OHRA query if a board member wishes access to a medical record why is the board as a whole the body to approve the request. They further comment that any board member who has a relationship to the patient should be excluded from deliberations. They feel, too, that guidelines are needed for the definition of "exceptional" cases.

Recommendation:

In more than 20 years experience as a health service administrator and hospital trustee the writer cannot recall any occasion when it has been necessary for members of hospital boards to have direct access to medical records to properly discharge their duties. On the other hand the writer recognizes that possibly there may be exceptional cases where it is essential, such as in disciplinary actions. Consequently, with some reservations, it is recommended that the recommendation be implemented with the clear understanding the administrator must obtain the approval of the board, not just the chairman of the board. This recommendation should apply to other health care facilities.

64. THAT THE OBLIGATION OF CONFIDENTIALITY BINDING ON HOSPITAL EMPLOYEES BE EXTENDED TO MEMBERS OF HOSPITAL BOARDS.

Comment:

CPSO, OMA and OHA all agree with the recommendation.

WCB feels this recommendation could interfere with the necessary response relating to medical conditions, by board members or the Executive Director of the Medical Services Division or of the Claims Services Division, in situations where a patient has gone public via the media and has disclosed medical matters which require medical statements for response.

OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation with due regard to concern of WCB. The recommendation should apply to other health care facilities.

65. THAT LEGISLATION PERMIT THE HOSPITAL OR HEALTH-CARE FACILITY TO RELEASE PATIENT INFORMATION TO AN OUTSIDE SERVICE ORGANIZATION WITHOUT PATIENT AUTHORIZATION, PROVIDED THAT THE AGREEMENT BETWEEN THE PARTIES PROVIDES FOR REGULATION OF ACCESS TO, RELEASE, HANDLING, TRANSMITTAL, SECURITY AND DESTRUCTION OF IDENTIFIABLE PATIENT INFORMATION.

Comment:

CPSO, OMA and OHA all agree with the recommendation.

Ontario Branch, Canadian Society of Hospital Pharmacists points out this could relate to release of drug prescription information to third person insurance payers and queries who would coordinate and assure that such agreements have been established.

WCB feels further clarification of the recommendation is needed.

OCHRA/OHRA agree with the recommendation but feels a definition of services organization should be included in the guidelines.

Recommendation:

Implement the recommendation with due regard to concern of the Ontario Branch, Canadian Society of Hospital Pharmacists.

66. THAT THE LEGISLATION GOVERNING HOSPITALS AND HEALTH-CARE FACILITIES PERMIT THE TRANSFER OF PATIENT INFORMATION TO A DESIGNATED RECEIVER IN ANOTHER HOSPITAL OR HEALTH-CARE FACILITY TO WHICH A PATIENT IS BEING DIRECTLY TRANSFERRED WITHOUT THE WRITTEN CONSENT OF THE PATIENT, PROVIDED THAT THE PATIENT (OR THE PATIENT'S REPRESENTATIVE) HAS BEEN NOTIFIED OF THE INTENDED TRANSMITTAL BEFORE IT OCCURS IN ORDER THAT HE OR SHE MAY HAVE THE OPTION TO PROHIBIT THE DISCLOSURE. IF THE URGENCY OF THE SITUATION OR THE PATIENT'S CONDITION PREVENTS THIS NOTIFICATION, THIS FACT MUST BE DULY NOTED AND THE PATIENT INFORMED OF THE TRANSFER OF INFORMATION AS SOON AS POSSIBLE AFTER THE FACT.

Comment:

CPSO disagrees with the recommendation. The requirement for prior notice is impractical and would not serve the best interests of the patient.

OMA supports the principle, but realizes it could be cumbersome and difficult to implement and recommend the transfer of only relevant and pertinent information necessary for the ongoing care of the patient, not all medical information that has been collected.

OHA recommends:

> that the legislation governing hospitals and health care facilities permit the transfer of information relevant and necessary for the ongoing care of the patient to a designated receiver in another hospital or health care facility to which a patient is being directly transferred without the written consent of the patient. The patient (or the patient's representative) must be notified of the transmittal either beforehand or as soon as possible after the fact.

Ontario Branch, Canadian Society of Hospital Pharmacists is concerned that health professionals other than physicians have not been considered with respect to release of necessary information to non-institutional health professionals such as community pharmacists to ensure continuity of care.

Ontario Association for the Mentally Retarded feels the recommendation should apply to organizations such as theirs.

WCB disagrees with the recommendation on the basis it will cause undue delay in the process of obtaining the patient's consent, jeopardize treatment and be detrimental to the outcome of treatment and the ultimate health and well-being of the patient.

OCHRA/OHRA agree with the recommendation but feel the transfer of information should relate to the "continuation of care" only, with no proviso. They believe it is desirable but not always possible to inform the patient or representative. They feel the recommendation conflicts with recommendation 67.

Recommendation:

It is recommended that the recommendation should be implemented as revised by the OHA and that due consideration be given to the need for similar transfer of relevant information necessary for ongoing care of the patient to non-institutional health professionals and to the needs of organizations such as Associations for the Mentally Retarded.

67. THAT, WHERE THE TRANSFER OF A PATIENT IS NOT INVOLVED, A HOSPITAL OR HEALTH-CARE FACILITY BE PERMITTED TO RELEASE CONFIDENTIAL PATIENT INFORMATION TO ANOTHER HEALTH FACILITY WITHOUT THE CONSENT OF THE PATIENT IF THERE IS A THREAT TO THE PATIENT'S LIFE, HEALTH OR SAFETY. IN ANY OTHER CASE THE PATIENT'S AUTHORIZATION MUST FIRST BE OBTAINED.

Comment:

CPSO agrees and supports the recommendation and recommends appropriate authority should be permitted to release confidential information in the circumstances to which reference is made in comments on recommendation 22. OMA supports the recommendation, but notes the possibility of difficulty and delay transferring the authorization from the requesting health care facility to the facility wherein the information resides. OHA agrees but feels the word "threat" should be qualified to read "presumed threat."

WCB disagrees for the same reasons recorded in the comments in the preceding recommendation.

OCHRA/OHRA agree but feel the recommendation conflicts with recommendation 66.

Recommendation:

Implement the recommendation.

68. THAT THE LEGISLATION PERMIT HOSPITALS AND HEALTH-CARE FACILITIES TO TRANSMIT PATIENT INFORMATION, WITHOUT THE WRITTEN CONSENT OF THE PATIENT, TO THE PHYSICIAN WHO REFERRED THE PATIENT TO THE HOSPITAL OR THE PHYSICIAN TO WHOM THE PATIENT IS BEING REFERRED BY THE ATTENDING PHYSICIAN FOR FURTHER CARE, PROVIDED THAT THE PATIENT (OR THE PATIENT'S REPRESENTATIVE) HAS BEEN NOTIFIED OF THE INTENDED TRANSMITTAL BEFORE IT OCCURS, IN ORDER THAT HE OR SHE MAY HAVE THE OPTION TO PROHIBIT THE DISCLOSURE. IF THE URGENCY OF THE SITUATION OR THE PATIENT'S CONDITION PREVENTS THIS NOTIFICATION, THIS FACT MUST BE DULY NOTED AND THE PATIENT INFORMED OF THE DISCLOSURE OF INFORMATION AS SOON AS POSSIBLE AFTER THE FACT.

Comment:

CPSO disagrees considering it impractical to require prior notification in the circumstances outlined in the recommendation.

OMA supports the recommendation, but notes problems encountered under the Mental Health Act in which patients can refuse permission to allow their records to be transferred to another physician who may be responsible for the continuing care of that patient.

OHA agrees with the recommendation. WCB disagrees with the recommendation. OCHRA/OHRA agree with the recommendation.

Ontario Physiotherapy Association is concerned with the possible impact on progress notes and consultation notes, that physiotherapists send to the referring physician.

Recommendation:

Implement the recommendation.

69. THAT, WHERE A REFERRAL BY THE ATTENDING PHYSICIAN TO ANOTHER PHYSICIAN IS NOT INVOLVED, LEGISLATION PERMIT A HOSPITAL OR HEALTH-CARE FACILITY TO RELEASE CONFIDENTIAL PATIENT INFORMATION TO THE PATIENT'S PHYSICIAN WITHOUT

THE CONSENT OF THE PATIENT IF THERE IS A THREAT TO HIS OR HER LIFE, HEALTH, OR SAFETY. IN ANY OTHER CASE, THE WRITTEN AUTHORIZATION OF THE PATIENT MUST FIRST BE OBTAINED.

Comment:

CPSO disagrees with the recommendation and feels appropriate authority should be permitted to release confidential information in the circumstances to which reference is made in the comment on recommendation 22.

OMA supports the recommendation.

OHA supports the recommendation, but recommends expansion to cover presumed threat to the life of the patient or others.

WCB disagrees with the recommendation. See comments to Rec. 66, 67 and 68.

OCHRA/OHRA feel the recommendation, allows no mechanism for verification that the physician is actually treating the patient, they question whether this should be restricted in life-threatening situations as continuity of patient care should also be a major priority.

Recommendation:

Implement the recommendation with due regard to concern of CPSO and ensuring no conflict with recommendation 23.

70. THAT LEGISLATION PERMIT A HOSPITAL OR HEALTH-CARE FACILITY TO REVEAL THE PRESENCE OF A PATIENT, HIS OR HER LOCATION AND HIS OR HER GENERAL CONDITION TO ANY PERSON WHO INQUIRES, BUT ONLY IF THE PATIENT (OR THE PATIENT'S REPRESENTATIVE) HAS NOT OBJECTED, IN WRITING, TO THIS DISCLOSURE. THE HOSPITAL OR HEALTH-CARE FACILITY SHALL NOT REVEAL SPECIFIC INFORMATION ABOUT THE PATIENT'S CONDITION OR TREATMENT UNLESS REQUIRED OR PERMITTED BY LAW.

Comment:

CPSO, OMA and OHA all agree with the recommendation.

Toronto General Hospital considers the recommendation impractical - the release of information must be a judgment option for the health care provider based on the specific situation (e.g. release by an Emergency Department to a next-of-kin).

Sudbury Memorial Hospital agrees with the recommendation.

WCB disagrees with the recommendation on the basis that it will cause undue delay, make it impossible to advise the next-of-kin or relatives as to the status of the patient until such consent was obtained giving rise to undue anxiety on the part of next-of-kin and relatives.

OCHRA/OHRA agree with the recommendation. Ontario Physiotherapy Association feels the rights of parents of minors should be specifically mentioned.

Recommendation:

Implement the recommendation with provision for communication with the patient's next-of-kin.

71. THAT LEGISLATION GOVERNING CONFIDENTIAL INFORMATION MAINTAINED BY HOSPITALS AND HEALTH-CARE FACILITIES PERMIT THE DISCLOSURE OF INFORMATION CONCERNING A PATIENT WHO IS CONFINED IN A CORRECTIONAL INSTITUTION AND WHO HAS BEEN HOSPITALIZED, TO THE SUPERINTENDENT, DIRECTOR OR MEDICAL OFFICER OF THE PATIENT'S INSTITUTION, FOR THE PURPOSE OF MAINTAINING THE HEALTH OF THE PATIENT, PROVIDED THE PATIENT IS NOTIFIED OF THE DISCLOSURE.

Comment:

CPSO agrees with the recommendation.

OMA agrees with the recommendation, but believes that the disclosure of the total health record would be unnecessary.

OHA agrees with the recommendation.

Sudbury Memorial Hospital feels the recommendation is not consistent with Recommendations 68 and 69.

WCB agrees provided no delay is so generated.

OCHRA/OHRA feel that an inmate should have the right to consent for release of information, as anybody else unless it is a life-threatening situation.

Recommendation:

Implement the recommendation.

72. THAT LEGISLATION GOVERNING CONFIDENTIAL PATIENT INFORMATION IN HOSPITALS AND HEALTH-CARE FACILITIES AUTHORIZE THE EXAMINATION AND RECEIPT OF ANY PATIENT INFORMATION BY A CORONER OR HIS AUTHORIZED REPRESENTATIVES IN ACCORDANCE WITH THE PROVISIONS OF THE CORONERS ACT, 1972.

Comment:

CPSO, OMA, OHA and WCB all support the recommendation.

OCHRA/OHRA feel the coroner, in turn should report back to the hospital his findings in order that records may be completed as required by Regulation 729.

Recommendation:

Implement the recommendation.

73. THAT THE REPORTING OF CONFIDENTIAL INFORMATION TO DESIGNATED AUTHORITIES UNDER MANDATORY REPORTING REQUIREMENTS BE REFLECTED IN LEGISLATION GOVERNING THE CONFIDENTIALITY OF PATIENT INFORMATION MAINTAINED BY HOSPITALS AND HEALTH-CARE FACILITIES BY IDENTIFYING EVERY REPORTING REQUIREMENT.

Comment:

CPSO, OMA, OHA all support the recommendation.

WCB agree and would like WCB identified in legislation as one of the designated authorities.

OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

74. THAT LEGISLATION GOVERNING HOSPITALS AND HEALTH-CARE FACILITIES PERMIT THE APPROPRIATE REPRESENTATIVE APPOINTED BY ANY COLLEGE GOVERNED BY THE HEALTH DISCIPLINES ACT, 1974 THE SAME RIGHT TO EXAMINE AND RECEIVE CONFIDENTIAL PATIENT INFORMATION AS IS NOW FOUND IN SECTION 48(4) OF REGULATION 729 WITH RESPECT TO THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO.

Comment:

CPSO feels the recommendation is poorly worded and requires clarification with respect to the need for other colleges to have access to medical records. OMA and OHA support the recommendation but feel the privilege should be restricted to that portion of the record pertaining to that colleges registrant's activity and area of involvement.

OHA recommends rewording as follows:

> That the special investigative powers accorded to the CPSO under Section 48(4) of Regulation 729 of The Public Hospitals Act remain restricted to that college but that legislation permit hospitals and health care facilities to allow the appropriate representative appointed by any other college governed by The Health Disciplines Act, 1974 the right to examine and receive confidential patient information for the purpose of enquiring into the professional conduct of one of its members.

The College of Nurses of Ontario supports the recommendation and urges legislative enactments. See also comments re recommendations 28 and 59.

WCB agrees with the recommendation.

OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation following liaison with appropriate colleges and other interested bodies (OMA, OHA) to ensure any legislation satisfies the needs and concerns of all.

75. THAT LEGISLATION PROVIDING FOR THE COLLECTION, AUDIT OR INSPECTION OF CONFIDENTIAL PATIENT-IDENTIFIABLE INFORMATION MAINTAINED BY HOSPITALS AND HEALTH-CARE FACILITIES, BY GOVERNMENT RECIPIENTS, REQUIRE THAT EVERY CATEGORY OF GOVERNMENT RECIPIENT CONDUCT A REVIEW ON A PERIODIC BASIS AND REPORT TO THE DEPUTY MINISTER OF HEALTH OR HIS DESIGNATE WITH RESPECT TO:

(A) THE PURPOSE AND OBJECTIVE IN OBTAINING THIS INFORMATION;

(B) THE METHOD USED TO ACHIEVE THE PURPOSE, TO DETERMINE IF IT IS THE LEAST INTRUSIVE POSSIBLE (METHODS OF ACHIEVING THE PURPOSE WITHOUT USING PATIENT-IDENTIFIABLE INFORMATION SHOULD BE SOUGHT. CONSIDERATION SHOULD BE GIVEN TO EMPLOYING PERSONS WITH MEDICALLY-ORIENTED TRAINING OR QUALIFICATIONS IN POSITIONS WITH A HIGH FREQUENCY OF EXPOSURE TO SENSITIVE MEDICAL INFORMATION);

(C) THE QUANTITY, QUALITY AND USE OF THE INFORMATION OBTAINED, TO DETERMINE IF PRACTICES ARE CONSISTENT WITH THE STATED REQUIREMENTS; AND

(D) THE PROCEDURES IN PLACE TO SAFEGUARD THE CONFIDENTIALITY OF THE INFORMATION AND TO PROVIDE FOR ITS PROMPT DESTRUCTION, INCLUDING A RETENTION SCHEDULE AND LOGGING AND DESTRUCTION PROCEDURES.

Comment:

CPSO agrees with the recommendation.

OMA feels the recommendation offers little protection for the patient and that there should be an independent mechanism to determine if the government really needs the information it is seeking.

OHA supports the recommendation.

WCB feels the recommendation is too vague and requires better definition.

OCHRA/OHRA and Ontario Physiotherapy Association agrees with the recommendation.

Recommendation:

Implement the recommendation with due consideration to the reservations of the OMA.

76. THAT LEGISLATION GOVERNING THE CONFIDENTIAL INFORMATION MAINTAINED BY HOSPITALS AND HEALTH-CARE FACILITIES PERMIT THE DISCLOSURE OF HEALTH INFORMATION TO PRESCRIBED GOVERNMENT RECIPIENTS AUTHORIZED TO COLLECT, AUDIT OR INSPECT CONFIDENTIAL INFORMATION UNDER PROVINCIAL LEGISLATION.

Comment:

CPSO agrees with the recommendation.

OMA has similar reservations about this recommendation as the preceding one. If legislation is enacted to permit government officials to receive confidential information without patients consent, then it should clearly state the kind of information which each category of official may receive. There should be very few, if any, occasions where there would be a need to inspect confidential patient information from a medical record.

OHA supports the recommendation.

Ontario Cancer Treatment and Research Foundation is concerned that the provisions of the Cancer Act, RSO 1980, Section 7 should not be affected.

WCB agrees with the recommendation.

OCHRA/OHRA feel the government investigators should have some knowledge of health care.

Recommendation:

Implement the recommendation with due regard to the concerns of the OMA and the Ontario Cancer Treatment and Research Foundation. A meeting with representatives of OMA may be advisable.

77. THAT ACCESS TO CONFIDENTIAL PATIENT INFORMATION BY THE OFFICIAL REPRESENTATIVES OF ACCREDITATION SURVEYORS FOR THE PURPOSE OF GRANTING OR REVIEWING ACCREDITATION BE PERMITTED UNDER LEGISLATION GOVERNING HOSPITALS.

Comment:

CPSO, OMA, OHA, WCB and OCHRA/OHRA all support this recommendation.

RNAO suggests that the Ministry should explore with the Canadian Council on Hospital Accreditation and its counterparts or other health care facilities, the possibility of their reviewing and/or revising their standards to reflect the principles espoused in the Krever Recommendations.

Recommendation:

Implement the recommendation.

78. THAT THE GOVERNMENT OF ONTARIO REQUEST THE FEDERAL GOVERNMENT TO ADOPT FOR ITS HEALTH-CARE FACILITIES OPERATING IN ONTARIO THE SAME MINIMUM REQUIREMENTS FOR PROTECTING THE CONFIDENTIALITY OF PATIENTS' HEALTH INFORMATION AS IS FOUND IN ONTARIO PROVINCIAL LEGISLATION.

Comment:

OMA, OHA, WCB and OCHRA/OHRA all support the recommendation.

Recommendation:

Implement the recommendation.

Chapter 22: Individual Health Care Providers

79. THAT LEGISLATION PROVIDING FOR THE DISCLOSURE OF HEALTH INFORMATION FOR THE PURPOSES OF AUDIT OR PROFESSIONAL MONITORING REQUIRE THAT ANY PERSON WHO OBTAINS INFORMATION FOR THESE PURPOSES:

    (A) REMOVE OR DESTROY INFORMATION THAT ENABLES PATIENTS TO BE IDENTIFIED WHERE IDENTITY IS NOT RELEVANT OR NECESSARY TO THE INVESTIGATION OR, IF IDENTIFIABLE INFORMATION IS NECESSARY, AT THE EARLIEST OPPORTUNITY AFTER THE COMPLETION OF THE INVESTIGATION;

    (B) BE PROHIBITED FROM FURTHER USE OR DISCLOSURE OF IDENTIFIABLE HEALTH INFORMATION UNLESS REQUIRED BY LAW OR UNLESS THE INFORMATION IS REQUIRED TO RELIEVE AN EMERGENCY SITUATION AFFECTING THE HEALTH OR SAFETY OF ANY PERSON;

    (C) BE REQUIRED, ON A PERIODIC BASIS, TO PROVIDE A REPORT TO THE DEPUTY MINISTER OF HEALTH OR HIS DESIGNATE SETTING OUT,

        (i) THE PURPOSE OF THE AUDIT OR MONITORING;

        (ii) HOW THE INFORMATION REQUIRED IS BEING USED, TO DETERMINE IF PRACTICES ARE CONSISTENT WITH THE PURPOSE AS STATED AND THE LEGISLATIVE REQUIREMENTS FOR THE AUDIT OR MONITORING;

        (iii) THE METHOD USED TO ACHIEVE THE PURPOSE, TO DETERMINE IF IT IS THE LEAST INTRUSIVE POSSIBLE WITH RESPECT TO THE USE OF IDENTIFIABLE PATIENT INFORMATION; AND

        (iv) THE PROCEDURES IN PLACE TO SAFEGUARD THE PHYSICAL SECURITY OF IDENTIFIABLE PATIENT INFORMATION, INCLUDING LOGGING PROCEDURES, DESTRUCTION PROCEDURES AND A RETENTION SCHEDULE.

Comment:

CPSO agrees with the first part of this recommendation, agrees with the principle of the second part but sees no need for emergency provisions to be stated in legislation and disagrees with the third part as audit and monitoring of professional services and the controls relating to such procedures are the responsibility of that college.

OMA agrees with the principle of destroying any information identifying a patient and the physician as soon as the purpose for using the information has been fulfilled. OMA questions whether the recommendation includes in-hospital activity such as medical audit-internal hospital audits of professional activity should not need to be reported to the Deputy Minister of Health.

OMA questions whether the Deputy Minister is the appropriate person to receive reports should it not be the Minister?

Ontario Chapter, College of Family Physicians of Canada supports the recommendation.

OHA supports the recommendation other than necessary and customary procedures of medical peer review in health care facilities.

OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation excluding professional peer review in hospitals and health care facilities. As professional monitoring is or may be a responsibility of the various colleges which come under The Health Disciplines Act, 1974, it is recommended that there should be discussion with the appropriate colleges before any revision of existing legislation or enactment of new legislation.

80. THAT THE DEFINITION OF PROFESSIONAL MISCONDUCT APPLICABLE TO ALL HEALTH-CARE PROVIDERS WHOSE PROFESSIONS FALL WITHIN THE HEALTH DISCIPLINES ACT, 1974 REFLECT THE BASIC REQUIREMENT THAT PATIENT INFORMATION, INCLUDING INFORMATION WITH RESPECT TO PROFESSIONAL SERVICES PERFORMED, SHOULD BE KEPT CONFIDENTIAL, AND NOT DISCLOSED TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE PATIENT, UNLESS REQUIRED BY LAW, OR UNLESS THERE IS A THREAT TO THE LIFE OR SAFETY OF THE PATIENT OR ANOTHER.

Comment:

This recommendation is not acceptable to the CPSO which would support an amendment to Ontario Reg. 577/75 Section 26-27 by adding after "required to do so by law" - "except where there is reason to believe that the disclosure of information given in confidence would prevent an act of violence or injury to the patient or to another person" (see also recommendation 22).

OMA, Ontario Chapter, College of Family Physicians of Canada, OHA all support the recommendation.

College of Nurses of Ontario does not support the recommendation considering that present Regulation 21(k) under the Nursing Part of The Health Disciplines Act, 1974 is preferable in that it ensures confidentiality except where disclosure is in the best interests of the patient as determined by the registrant. The College feels other recommendations in the report clarify the circumstances in which disclosure is justified. If they are implemented and if present Regulation 21(k) remains unchanged, then in the view of the College, there is protection against unwarranted disclosure while at the same time giving the registrant flexibility to meet situations where disclosure would be appropriate.

Ontario College of Pharmacists supports the recommendation.

Ontario Branch, Canadian Society of Hospital Pharmacists expresses concern that the recommendation does not make provision for the release of information to non-institutional health professionals such as community pharmacists for the continuance of proper patient care where life, health or safety may not be directly compromised.

OCHRA/OHRA agree with the recommendation. See comment of Ontario Psychology Association and recommendation 13.

Recommendation:

This recommendation requires further discussion with representatives of the various professional colleges which come under The Health Disciplines Act, 1974 before any decision is reached regarding implementation.

81. THAT AGREEMENTS BETWEEN THE MINISTRY OF HEALTH AND HEALTH SERVICE ORGANIZATIONS PROVIDE:

    (A) THAT OWNERSHIP AND CONTROL OF PATIENTS' MEDICAL RECORDS BY THE BOARD OF THE HEALTH SERVICE ORGANIZATION CARRY WITH IT AN OBLIGATION ON THE PART OF THE BOARD TO MAINTAIN THE CONFIDENTIALITY OF THE MEDICAL RECORDS;

    (B) THAT THERE BE NO ACCESS BY THE HEALTH SERVICE ORGANIZATION'S BOARD OR ITS MEMBERS AND THE STAFF, OTHER THAN THE PROFESSIONAL STAFF, TO THE PATIENTS' MEDICAL RECORDS WITHOUT THE CONSENT OF THE PATIENTS; AND

    (C) THAT THE BOARD OF THE HEALTH SERVICE ORGANIZATION NOT PERMIT THE DISCLOSURE OF MEDICAL INFORMATION FROM THE MEDICAL RECORDS OF A PATIENT WITHOUT THE CONSENT OF THE PATIENT UNLESS REQUIRED BY LAW OR EXCEPT WHERE THERE EXISTS A THREAT TO THE LIFE OR SAFETY OF THE PATIENT OR ANOTHER.

Comment:

CPSO agrees with the first two parts of this recommendation. It supports the principle of the third part, but feels the exception should be as stated in comments to recommendation 22.

OMA, Ontario Chapter, College of Family Physicians of Canada and OHA all support the recommendation. OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation with due regard to the concern of the CPSO.

Chapter 23: Access to One's Own Health Information

General Comments:

Because of the strong negative response, the comments of the various respondents to recommendations 82-85 have been recorded in much greater detail than responses to other recommendations and indeed most have been quoted verbatim to afford the reader an opportunity to review in detail the comments and concerns expressed by the respondents.

In general, the various bodies and individuals who have responded to the Report have agreed with the principle of the individual's right to access to his or her own health information. Not surprisingly, however, the majority of bodies and individuals who responded and particularly those representative of health professionals such as physicians, psychiatrists and psychologists whose reports are most likely to contain highly sensitive material have indicated that, while they support the right of access to one's own health information they strongly oppose any right to free access to the record.

Generally, they indicate reports may contain opinions, technical data, third party reports and information that may be subject to misinterpretation and that require interpretation by a professionally trained individual. In the experience of the writer many of these reports contain technical jargon and abbreviations that do require interpretation if the information is to be meaningful to the individual. Even if the decision is made to grant the right to free access to records, it would be desirable that this should be accompanied by interpretation by the health provider who made the record if available and a good relationship exists, or by another person competent to interpret the report if the originator is not available or a good relationship does not exist.

In this regard the Ontario Hospital Association and the Ontario Medical Association have indicated a willingness to jointly undertake to update and further refine guidelines developed by these two associations to assist hospitals, health care facilities and their medical staff to set up the necessary procedures to provide access to information with interpretation without the need for legal process to satisfy modern day needs while the College of Physicians and Surgeons would undertake to ensure its registrants would comply with them. In the experience of the writer as a practising medical administrator the use of similar procedures for providing personal health information with professional interpretation has proven to be satisfactory.

Similarly there has been general support of the right of the individual to correct errors in factual information contained in personal health records, but strong opposition to any right to change opinions and factual information with which the individual may, for whatever reason, disagree even though it may be correct. The majority of respondents would favour the right to indicate disagreement rather than to change a record and with this, the writer would agree.

It seems to this writer that some changes are desirable and required. In many, perhaps most instances, no harm can be seen in giving the individual access to his own health record although it would be preferable that this should include interpretation by a competent person and preferably by the individual who entered the information in the record. There would, however, have to be a mechanism for protecting the confidentiality of information given in confidence by third parties which may be included in the record. Certainly it would appear reasonable to provide the individual with a copy of any report forwarded to a third party with the consent of the individual as has been suggested by the Ontario Chapter, College of Family Physicians of Canada provided this does not interfere with the normal flow of health information between health professionals and health care facilities which is necessary for the continuing care of the individual as he or she passes through the health care system.

It seems reasonable too, that the individual should be able to have personal access to records in any circumstances in which the legislation presently allows his or her designated representative to have such access. Certainly in the circumstances outlined by the Chairman of the Health Disciplines Board, it seems unreasonable that everyone at a disciplinary hearing may have access to the individual's personal health record except the individual himself or herself.

There are several alternatives. One could implement recommendations 82-85 as contained in the Report against the wishes of those who oppose them. Notwithstanding what Mr. Justice Krever has stated in the Report, the writer believes that information would then be omitted from personal health records and that the omission of this information could adversely affect patient care.

Alternatively one could consider some modifications to the recommendations that would satisfy some of the concerns about the right of access to one's personal health information and which would be, at the same time, acceptable to those who strongly oppose free access to the records themselves.

In the opinion of the writer, a decision whether to implement recommendations 82-85 as set out in the Report or to develop modified alternatives is a decision that should not be made quickly without considering all the potential implications. As Dr. David Marshall, a practising physician who is also a lawyer has stated, "clearly the law must change, but better we do it slowly and carefully than create unjust or just plain unworkable changes."

General Recommendation:

It is recommended that before any decision is made to implement recommendations 82-85 of the Report that an ad hoc advisory task force of persons with expertise and experience be set up to examine all the implications of recommendations 82-85 and to advise the Minister whether these recommendations should be implemented as submitted or in modified form.

Chapter 23: Access to One's Own Health Information

82. THAT LEGISLATION BE ENACTED TO EXPRESS THE GENERAL RULE THAT AN INDIVIDUAL HAS A RIGHT TO INSPECT AND RECEIVE COPIES OF ANY HEALTH INFORMATION, OF WHICH HE OR SHE IS THE SUBJECT, KEPT BY A HEALTH-CARE PROVIDER.

83. THAT A HEALTH COMMISSIONER, A WELL RESPECTED, NON-MEMBER OF THE HEALTH PROFESSIONS, BE APPOINTED, WHOSE RESPONSIBILITIES WOULD INCLUDE RECEIVING APPLICATIONS BY HEALTH-CARE PROVIDERS FOR AN EXEMPTION FROM THE OBLIGATION TO DISCLOSE INFORMATION TO A REQUESTING SUBJECT, RECEIVING APPLICATIONS BY AN INDIVIDUAL FOR CORRECTIONS TO HIS OR HER HEALTH INFORMATION, MAKING A DECISION ON THE APPLICATIONS, AND INFORMING THE HEALTH-CARE PROVIDERS AND THE SUBJECTS OF THE DECISION.

84. THAT WHEN, IN THE OPINION OF THE HEALTH-CARE PROVIDER, DISCLOSURE OF THE INFORMATION IS LIKELY TO HAVE A DETRIMENTAL EFFECT ON THE PHYSICAL OR MENTAL HEALTH OF THE REQUESTING INDIVIDUAL OR OTHER PERSON, AN APPLICATION MAY BE MADE BY THE HEALTH-CARE PROVIDER TO THE HEALTH COMMISSIONER FOR AN EXEMPTION FROM THE OBLIGATION TO DISCLOSE THAT INFORMATION. THE DECISION OF THE HEALTH COMMISSIONER SHOULD BE SUBJECT TO AN APPEAL TO THE COUNTY OR SUPREME COURT.

85. THAT, AFTER INSPECTING OR RECEIVING THE HEALTH INFORMATION, AN INDIVIDUAL HAVE A RIGHT TO REQUEST THAT THE INFORMATION BE CORRECTED. THE HEALTH-CARE PROVIDER SHALL MAKE THE CORRECTION AS REQUESTED OR INFORM THE INDIVIDUAL OF THE REASONS FOR THE REFUSAL. IN THE EVENT OF A REFUSAL, THE INDIVIDUAL MAY APPLY TO THE HEALTH COMMISSIONER FOR REVIEW OF THE REFUSAL. THE DECISION OF THE HEALTH COMMISSIONER SHOULD BE SUBJECT TO AN APPEAL TO THE COUNTY OR SUPREME COURT.

Comments:

The CPSO disagrees with recommendations 82-85 in principle and offers the following comments:

"The Report of the Commission of Inquiry into the Confidentiality of Health Information" is concerned with principles and practices which relate to the right to privacy and the freedom of information. The College recognizes that society has placed a high value on these principles. However, it must be emphasized that there are circumstances where an individual's right to privacy and the right of free access to personal information may not serve the best interests of the individual, or of society. The College is concerned that legislation which attempts to provide an absolute guarantee of these rights with respect to health records would not always be in the best interests of the patient, or the public.

Practices which relate to the freedom of information in other settings may not be compatible with the best interests of the patient, or society, when applied to health records. The College supports the principle, and believes that patients have the right to know what information is contained in their health records. What is proposed in the Report is not access to information, but that individuals should have the legal right to inspect all records or documents pertaining to their health. This is quite another matter with far-reaching implications which do not appear to have been given appropriate consideration.

The College is concerned that health records will not be as complete and useful as they are at the present time if the public is given a statutory right of direct access. This concern is based on the belief that subjective observations and opinions which might be challenged or tentative conclusions which could be taken out of context and misinterpreted, would no longer be included in the record. It would take some time for the consequences of a change in the quality and content of health records to become evident. It is, therefore, not surprising that there is little evidence that direct access to records has been detrimental to the patient in those jurisdictions where such legislation has been enacted. It is of even greater significance that there is no documented evidence that such provisions have been of any benefit in providing optimal health care.

The argument is made that, since an individual can authorize the release of information to a third party, he or she should have access to that information. This is reasonable, but there are more appropriate ways of ensuring that a patient has information released to others. When any information is to be released to a third party on the authorization of the patient, the College proposes that a copy should be available to the patient as well, except where this would not be in the patient's best interests.

Medical records are not kept for the purpose of supplying information to the patient. The primary purpose of the medical record is to assist the physician in providing care and treatment. The trust which is inherent in the doctor/patient relationship and which is essential for the caring process should not be undermined by legal requirements based on an assumption that information would not be given to a patient in a meaningful and understandable way by the physician.

The College believes that direct access to health records would not always be in the best interests of the individual. The College as the self-governing body of the medical profession in Ontario is prepared, and will take appropriate steps, to ensure that physicians provide reasonable information to their patients.

Statutory Right of Access

The proposal that legislation be enacted to provide the individual with the "----right to inspect and receive copies of any health information of which he or she is the subject----" is presented in the relevant context throughout the recommendations. The College firmly believes that such legislation would result in the observations and opinions which are presently included to assist the physician and others in providing care and treatment being omitted from records in the future, to the detriment of the individual and the public. The statement of the Commissioner that he does not believe "----that any responsible and ethical physician would omit from a medical record any information that, in the interests of proper medical care, belongs in it----" is unrealistic. To give but one example, it is not an uncommon practice for particularly sensitive information given in a psychiatric interview to be retained in a separate file under the direct control of the therapist."

Specific Comments:

Rec. 82: Do not agree. Patient is entitled to information, but should not have legal right of access to records.

Rec. 83: Do not agree. It should be the responsibility of the physician to provide reasonable information to a patient on request. The College would investigate any complaint against a physician for failure to do so.

Rec. 84: Do not agree. Physicians must exercise judgment in responding to request for information.

Rec. 85: Do not agree. Patients are not qualified to "correct" medical information.

The OMA disagrees with Recommendations 82-85 and comments as follows:

Rec. 82

This is the major recommendation resulting from the study and sets the principle for so many of the other recommendations in the report. Because of its significance and the strong response from physicians from around the province, a more detailed comment is made.

The Commissioner summarizes five principles upon which he bases the need for full patient access to his own health record:

(1) 'As an incident of human dignity, a patient ought to have the right of access to the most personal information about himself/herself. No person, even though he/she may be a professional with

> knowledge and experience, should be entitled to withhold that information.'

We favour, and have so stated, that there should be open, frank and honest communications between providers and consumers of health services. The patient should have access to information about his/her medical condition. This however, does not mean that the patient should have complete access. Hospital and clinical records are working documents that contain preliminary and interim professional opinions, provisional diagnoses, reports from third parties, results of investigations and other information that could be misinterpreted or be misleading to the patient. Records frequently contain opinions and not necessarily a collection of factual data.

There is no question that the quality and content of information placed in medical records would change, and material of potential value would be excluded, which would adversely affect patient care.

Physicians are paternalistic, a fact that is part of caring for patients, and which is an approach that is expected by most patients. This is part of the art of medicine that, if it were not present, would reduce the ability of the physician to assist his/her patient during the period of distress.

The second principle that Krever states is:

> (2) 'The patient in his/her own interest should be able to correct any misinformation which may appear in the record.'

Records contain both objective and subjective information. It is possible there may be errors in the objective information, but unless this was being transferred to other parties it would not likely be detrimental to patient care.

> (3) 'The patient will have a better understanding of his/her treatment and be in a better position to assist future care.'

If communications between the physician and the patient are satisfactory, there should be no unrevealed information in the record that would assist future care. The reverse is more likely to happen, that is, that additional information that the patient may glean from the record would be detrimental to future care, for the request to review records indicates a degree of mistrust and the obtained information may be misinterpreted. The patient will not be able to obtain a better understanding by reviewing his/her own records.

> (4) 'Access to file will allow the patient to make an informed consent to the release of information in the file to a third party when necessary.'

We can support the principle that the patient should know what information is being transferred to third parties such as insurance companies, lawyers, etc. The patient should be told what information will be transferred or, even better, be provided with a copy of the transferable information so that a consent or refusal would be based on knowledge of what is to be forwarded. It is at this time that if there are inaccuracies, they could be questioned and changed.

(5) 'Access creates a feeling of trust and openness between patient and health care providers, and the quality of health care will thereby be enhanced.'

This is a rather idealistic principle that is not likely to be so in today's indigenous society.

Rec. 83: The appointment of a Health Commissioner seems like rather a frivolous position which would be cumbersome and rather unnecessary. If recommendation 82 is placed into legislation, it may be necessary to have some mechanism for appeal and a Health Commissioner would be less formidable and less cumbersome than a referral to the courts. However this is not a recommendation we would support.

Rec. 84: Following our comments on Recommendation 83, again this appears to be an unnecessary position, but could be necessary depending on action by government.

Rec. 85: This whole exercise will be timeconsuming and cumbersome. It is more likely to lead to the health provider not placing any kind of controversial information in the record in the first place, which then would affect the quality and the usefulness of the medical record."

The Ontario Chapter, College of Family Physicians of Canada comments on Recommendations 82 - 85 as follows:

"The Ontario Chapter feels there are three separate issues to be addressed; the office record, the hospital record, and letters to other parties.

The office record is a record for the 'next person' who may be the writer or the writer's successor. It is a document of fact and opinion, recorded to provide continuity of care. Fact can be, and often is shared; it may be open to argument, but is a part of a continuum and can vary. Opinion includes differential diagnoses, conjecture, probabilities, possibilities and memoryjoggers. It can be likened to the notation by a judge at a trial who makes records to be used in summing up and deciding on a verdict, but which is never for the public eye.

We feel the office record is unquestionably and unequivocably the property of the physician. The College of Physicians and Surgeons of Ontario demands that we keep this record for six years for medical and legal reasons and as proof of provision of service.

The Canadian Medical Protective Association recommends that the record be kept by the physician or the physician's estate for at least ten years to protect the physician and his estate from possible action.

The hospital record and letters to third parties are different. They are essentially factual documents. The hospital record is available on subpoena. It should be, and is, protected from inquisitiveness, but is readily available as need be. We feel that in instances where third parties require information, it should be written and shared with the patient, in most instances, before transferral. Some of us do, and it has caused no problem."

Dr. P.D. Steinhauer, ViceChairman, Legislative Review Committee, Ontario Psychiatric Association, has commented as follows:

"Prior to the publication of the Report of the Krever Commission, several colleagues and I were discussing with the Deputy Minister of Social Services (Robert Curmen) and the Associate Deputy Minister (Judge George Thompson) concerns we had over child patients who were recipients of residential psychiatric treatment having access to written case records.

We had, I think, just about reached an argreement when the Report of the Krever Commission took the matter out of the hands of COMSOC and placed it under the Ministry of Health.

In these discussions which occurred over a period of time, we at no point questioned the patient's Right to Information which we encouraged and supported but were strongly opposed to his Right to View the Record. The reasons for our taking this position which we feel protects the right of the child and family while still protecting the treatment of the child and family, are summarized in the enclosed brief (Appendix "A"). It is rare that one achieves consensus among a group of child psychiatrists, but the compromise position was widely supported both by official organizations (Legislative Review Committee of Ontario Psychiatric Association, O.P.A.; Child and Adolescent Psychiatry Section of O.P.A.), and by a large number of colleagues both within child psychiatry and other mental health professions. Many of the responses to the Legislative Review Committee's brief were sharply critical of it on the grounds it was too conciliatory, so that the position endorsed by the brief represents a moderate one in the eyes of many distinguished colleagues.

One of these, Dr. Graham Berman, has made a point not sufficiently stressed in the enclosed brief. The psychiatric record of any child contains historical data involving not just the child but other members of the family. Some of this is given the psychiatrist in confidence with the understanding that it will not be shared with other family members. To be forced to betray that confidence by revealing the record (e.g. expressing knowledge of an extramarital affair, etc.) could not only have a detrimental effect on the family as a whole, but would totally and understandably undermine the therapeutic alliance between the psychiatrist and the patient whose confidence has been broken. Faced with such a situation, virtually all psychiatrists would have no alternative but to stop recording sensitive data as teachers have done in their S.R.A.'s. The results, in terms of decreasing validity of records for research purposes and of the danger that essential information would not be available to be passed on to professionals subsequently involved in the case, would be destructive and chaotic.

I cannot too strongly urge you to recognize the dangerous potential inherent in applying the recommendations of the Krever Commission without modification to the records of children and adolescents being treated in Residential Treatment Centres, especially when a reasonable alternative which protects the child and family's right to information without jeopardizing the child's right to adequate treatment exists."

Dr. R.W. Gunton, Internist, of London, Ontario, has commented as follows:

"I wish to express the reservation that I suspect many physicians hold toward right of access of patients to their own health records. This recommendation is consistent with the modern evolution of individual rights, a trend which of course encompasses women's rights, civil liberty in all its forms, full disclosure, freedom of information. From the point of view of the civil libertarian and the jurist who wishes to remain contemporary, it must seem logical, rational, and probably fair, to allow an individual to have access to any information concerning him, including his medical record. I would suggest however that these advocates of full disclosure are not fully sensitive to the substance or process inherent in a medical record, specifically the process of differential diagnosis. It is not infrequently necessary for a physician to consider several diagnostic possibilities in a given case, in order that appropriate investigation and possible useful therapy may be provided for the patient. Indeed there are circumstances where failure to include a range of diagnostic possibilities would be improper practice. These possibilities include psychiatric illness, veneral disease, sexual abberation, cancer, hysteria, malingering. Considerations of these diagnoses might be perfectly legitimate from a medical point of view and yet when reviewed by a patient they might be interpreted as imputed diagnoses rather than as part of an appropriate intellectual exercise designed to arrive at the correct diagnosis.

We will be told that the intelligent citizen would forgive such theoretical errors once he understands fully the differential diagnostic process. But I am not entirely convinced that many citizens would be so enlightened, nor am I convinced that the increasing number of lawyers searching for causes, would not find in a doctor's notes a basis for testing the laws of slander. I suspect that in adopting this attitude we in the profession will be accused again of paternalism, knowing better than the citizen what is good for him. I would reiterate that few individuals, even judges, have the insight or experience to understand this issue. Enactment of legislation or promulgation of regulations would give patients rights of access to physicians', as well as hospital records and would have the effect of making a prudent physician wary, circumspect, and I must guess secretive of diagnostic considerations. The admonition that our surest and best protection against unfair litigation lies in full and complete written notes would I suspect be invalid.

There are I believe already some precedents which should guide us. In universities at the undergraduate and postgraduate level the records of evaluation are available to students. In the process of promotion of Faculty the entire dossier, including all letters of reference, are made available upon request to unsuccessful candidates. These have led to challenges and even litigation which could be defended on the basis of rights and justice. But when one considers on a numerical basis the sheer size of the problem in respect to medical records and the vagaries of the human personality, one would predict legal actions against physicians would increase beyond reason.

I am not certain whether the Krever recommendations include doctor's office records and hospital records together or whether these recommendations apply only to hospital records. Although it might be easier to understand the statutory rights of citizens to the records held by a public institution, a restriction of the right of these records would still cripple and inhibit not only the full and open scientific discussion of a patient's problem, but in teaching institutions would constrain or sterilize much academic discourse."

Dr. C.L.K. McIlwaine, Internist, of St. Thomas, Ontario, has commented as follows:

"When a patient comes to see me in consultation, he is making a contract for medical investigation, treatment and advice. He pays for this directly or by arrangement with his insurance plan. As a result of this, I believe he is fully entitled to see the results of any investigations that are carried out on him including reports on blood test, x-rays, etc. I do not believe it entitles him to look at and read comments made by myself in preparing the advice that I am going to give to him. I believe that, as a physician treating a patient, I have the right to confidentiality of thought process and records.

I would therefore support patients being given the right to see the results of investigations but I believe that they should not be given the right to review reports prepared by physicians or copies of history and examination results."

The OHA disagrees with recommendations 82, 83, 84 and 85 and supports the position of the CPSO and OMA that a patient, a former patient has the right to receive all relevant information from his own records, accompanied by fair explanation by the attending physician(s) but should not have the right to access to the record. A joint task force of OHA and OMA produced in 1978 a set of voluntary guidelines to assist hospitals and medical staff set up the necessary procedures to provide such access without the need for legal process and has indicated that these two associations would be willing to update and further refine these guidelines and procedures to satisfy modern day needs while the CPSO would undertake to ensure its registrants would comply with them.

The Toronto General Hospital agrees that the patient should have a right to be apprised of information contained in his/her health record, but not by direct perusal of it. This hospital finds recommendation 83 acceptable only with deletion of that portion which reads: "necessary applications by health care providers for an exemption from the obligation to disclose information to a requesting subject". It disagrees with recommendation 84 and recommends its deletion. Recommendation 85 is acceptable only if the words "inspecting or" are deleted from the first line.

The Sudbury Memorial Hospital supports the position of the OHA with respect to recommendation 82. This hospital does not consider recommendations 83, 84 & 85 are practical or workable and believes they require further study. The hospital raises the following questions:

1. Who would apppoint the Commissioner?
2. Would there be one for the whole province or several?
3. How available would this person be?
4. Besides a salary, would this person have an expense account? - could be a very costly service
5. Who would pay for this service
    (a) the patient, doctor or hospital making the report
    (b) what about employees' and doctors' time spent in the appeal process - more added expense to the health care budget?
6. We do not feel that corrections should be made to an original document, as this is tampering. An addendum could be added.

The College of Nurses of Ontario support the concept of the patient's right of access to his health information. The College recommends that a common "health record" be designed for use by all professionals providing health care to an individual.

The College points out that under Regulation 729 of The Public Hospitals Act distinctions are made between records kept by different health care providers. Only certain of these records are kept as part of the permanent record which would be available to the patient, the so-called "medical records". The nurses notes are not included and therefore would not be available to the patient after a two year period.

Given the existing appeal mechanisms in our society, the College of Nurses does not support the creation of a Health Commissioner position.

The Ontario College of Pharmacists points out that pharmacists who maintain patient medication profiles may have drug-related information in their possession which has been provided by the patient or physician. Supplying the patient with a drug history on request would normally pose no difficulty; however, there may conceivably be a problem of disclosure if a patient's physician had provided to a pharmacist, in confidence, other information (such as a diagnosis) on a patient, although this situation would be uncommon.

Ontario Pharmacists" Association expresses concern re recommendation 80 pointing out there are occasions when a community pharmacist and hospital pharmacist need to share drug history when a patient is admitted to, or discharged from hospital. This exchange is necessary for continuity of patient care.

The Ontario Cancer Treatment and Research Foundation agrees that patients have a right of access to information regarding their health but disagrees strongly with the recommendation that patients should have unlimited access to their own health records. Frequently, comments are recorded in medical charts which may not be interpreted correctly by the lay person. The comments are for the physician's own reference and could be easily misconstrued by the patient which could lead to a breakdown in the patient-doctor relationship. If this recommendation were implemented, the medical records usefulness as a means of communication between doctors for the patient's benefit would be seriously diminished. Nevertheless, doctors should be prepared to discuss in detail the content of the medical record with the patient or next-of-kin when appropriate (Mental infirmity, death, etc.).

Mr. David Baker, Executive Director, The Advocacy Resource Centre for the Handicapped, comments as follows:

"My primary concern with respect to the implementation of the Report on Confidentiality of Health Information is the implementation of the provisions concerning patients' access to their own medical records.

I am enclosing, for your reference, the brief submitted on behalf of the Canadian Mental Health Association (Ontario Division) to Mr. Justice Krever. I served as the legal advisor to the Association and assisted in the preparation of this report. I would further note that this report was endorsed in toto by the Ontario Association for the Mentally Retarded.

I would specifically draw your attention to the provisions concerning access to patient records. These sections deal with the access required by patients to their own medical records. You will note that it recommended that patients be given unrestricted access to their records. Mr. Justice Krever suggests a paternalistic system of keeping people away from their own records in certain circumstances. This procedure parallels that of the Mental Health Act and the Child Welfare Act.

You will further note reference in the brief to the experience in American Jurisdictions under the Privacy Act. You will note that their experience has been most favourable and without the requirement of paternalistic sections such as those recommended by Mr. Justice Krever.

I am sure you will also find that there have been difficulties experienced in interpreting the procedures to be followed by courts in implementing such a paternalistic procedure. In particular, there have been problems where the party requesting access to the file must have the contents of the file revealed to them in order to make representations to the decision-making body as to whether or not the material should be disclosed. This kind of catch 22 situation can be an administrative nightmare. The alternative is to follow a process which is as formalistic and contrary to the principles of natural justice as that which is applied under the Official Secrets Act.

Bearing in mind the satisfactory experience in the United States with unrestricted access and recognizing the possible administrative difficulties not to mention expenses associated with implementing a review procedure such as that recommended by Mr. Justice Krever, I would suggest that unrestricted access be recommended."

On the other hand, The Ontario Association for the Mentally Retarded in their response to the report did not comment either favourably or unfavourably to recommendations 8285 dealing with access to health records.

Consumers' Association of Canada (Ontario) urge that the Report's Recommendations, particularly those relating to the right of access to one's own health information be implemented as soon as possible. The availability of this information, particularly x-rays is of real concern. They draw attention to the problem experienced by patients in the transfer of radiograms between practitioners as discussed in the X-Ray Safety in Ontario Report of the Advisory Committee on Radiology, March, 1980. (It appears to the writer that while this Association supports the right of access to personal health information, they are more concerned with the transfer of

X-Ray films and reports). In a letter to the Minister of Health on February 6, 1981 and in verbal discussion with the writer on September 18, 1981, Mr. Edward A. Pickering, Chairman, Health Disciplines Board indicated support by the Health Disciplines Board of recommendations 82 and 83 concerning access to health records.

The following comments are abstracted from Mr. Pickering's letter of February 6, 1981:

"As you know, the Health Disciplines Board has from the outset been concerned that the confidentiality provisions of provincial statutes prevented it from making available to the parties appearing before it, in a complaint review, documentation supplied to the Board by the College. It seems illogical that in a review before the Board, a patient cannot be shown, on his own request, records concerning himself, especially when they form part of the evidence on which the Board may base its decision. The Board feels it is put in the position of appearing to deny natural justice.

In our submission to Mr. Justice Krever, we sought his help in proposing a solution to this problem and suggested that the Board might be given discretion to release documents where this could be done without harmful or mischievous disclosure.

Mr. Justice Krever has come up with a recommendation (#82) to express in law the general rule that an individual has a right to inspect and receive copies of any health information of which he is the subject kept by a health care provider. This would be subject (#83) to a provision whereby a health care provider could apply to a health commissioner for an exemption to the obligation to disclose information to a requesting subject.

Our Board feels that these proposals offer a most satisfactory solution to our problem. Indeed, it is a simpler and more effective one than our own suggestion. It will, for example, make it unnecessary for the Board to exercise any discretion, as the complainant can obtain documents in advance of a review.

Mr. Justice Krever has, I believe, taken a giant step forward. In effect, he says an individual's medical records not only must be kept confidential, but also be made available to him. It is really indefensible that doctors, hospital staff, lawyers, insurance companies, complaint committees, and even the Health Disciplines Board, can all, in certain circumstances, have access to a person's medical data, but not the person himself. I believe Mr. Justice Krever has enunciated a new freedom: the freedom of a person to know (subject to a reasonable safeguard) the medical record concerning oneself."

OCHRA/OHRA agree with the limitations as outlined but feel that the Health Commissioner should be a member of the health field in order to have the experience to make such decisions. They point out it is not clear whether there is to be only one Health Commissioner for the whole province which they feel would be unworkable.

The Ontario Physiotherapy Association comments that recommendation 82 is the most important recommendation of the Report with considerable implications in all areas. They question the apparent reversal in recommendation 83 from recommendation 82 and suggest the role of Health Commissioner could be filled by the ombudsman of medical data bases (recommendation 41) with respect to recommendation 84, they recommend all requests for information should be granted regardless of effect since denial could have detrimental effect as well. One individual member of this association's Review Committee is not convinced of the need for either a Health Commissioner or Ombudsman of medical data bases and feels, if needed, one individual could fill both roles.

The Ontario Psychologists Association comment that in general they support the right of patients or clients to information about their own health care. The Ontario Board of Examiners' (OBEP) Standards of Professional Conduct (June, 1980) support this in principles 5.5 and 5.7 which state:

> 5.5 To the extent advisable and not contraindicated, a psychologist shall properly inform a person who has undergone a psychological assessment or his/her legal representative of the conclusions, opinions and advice issuing from the assessment within a reasonable time; and
>
> 5.7 To the extent advisable and not contraindicated, a psychologist shall supply a certificate or Report as requested by a client or his authorized agent within a reasonable time or within the time period agreed upon.

However, psychologists also have a duty to communicate such information clearly. Principle 7.3 states in part that information should be

> --- presented in a form which, in the judgment of the psychologist, is clear and not likely to be misunderstood by the recipient.
>
> Using Mr. Justice Krever's broad definition of health records, psychologists' records could include rough notes and raw test protocols which would not be clear and likely to be misunderstood by most clients.
>
> These records are then used to produce reports which are placed in the formal client record. Even these reports, being written for other professionals, may be misleading to clients. However, if the recommendations pertaining to access to

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one's own health information are implemented we believe that rough notes (which may even be destroyed once the formal report is written) and raw test protocols should be excluded in the interest of avoiding misunderstanding.

Another problem with access to test protocols is that they may reveal how responses are scored. This would invalidate the results of subsequent testing with the same instruments; thus efforts to evaluate improvement would be fruitless, as well it is possible that a patient would reveal information to others thereby invalidating the use of these tests for them.

For these reasons the Ontario Psychological Association recommends that psychological test protocols and rough notes be excluded from the patient's right of access.

While we would like to be, we are not convinced by Mr. Justice Krever's arguments that no "responsible and ethical physician would omit from a medical record any information that, in the interests of proper medical care, belongs in it because of the possibility that the patient may ask to inspect it". Some of the examples provided in the brief by the Clarke Institute (pp.481-484) are cases in which responsible professionals might very well leave out information for that reason. The existence of an appeal mechanism is no solution since it might be even more harmful to patients to be denied access by these means.

It seems to us that denial of patient access to their records is symptomatic of a general reluctance to deal honestly and directly with patients about their condition and treatment. To legislate patient access may do little to improve this larger problem, unfortunately, there are no easy solutions to this problem. We believe that the real solution lies in changing the attitudes of health care providers and institutions towards patients. We hope that the Ministry will carefully consider alternatives and their consequences before acting on this recommendation.

One final concern we have about patient access, is who will be notified of a request and thus have the opportunity to appeal to the Health Commissioner if necessary. This is especially pertinent in situations such as hospital group practices and employee health units where the reports of numerous different professionals make up the health record. Further, reports of previous treatment and health status from other sources are often included. It could be extremely difficult to notify all professionals involved particularly where reports are several years old. On the other hand, if professionals are not guaranteed the opportunity to apply for exemptions, quality and completeness of records may suffer. It is in these circumstances, where much of the communication among health care providers is in writing, that thorough and accurate records are essential.

In addition to the opportunity for appeal, psychologists wish to be notified because of their professional obligations to their patients. In many cases, it will be advisable for the psychologist to review his or her report(s) with the patient in order that the confidence, which may be crucial to the patient's treatment, can be maintained. Patients should also be made aware of the advantages of reviewing their records with professionals who can help interpret for them.

The Association therefore recommends:

(a) That when a patient requests access to a record containing psychological reports, a reasonable attempt to notify the psychologist(s) concerned be made prior to granting access; and

(b) The patient be encouraged to review psychological reports with a psychologist.

Chapter 24: Psychiatric Records and the Advisory Review Board

86. THAT THE NOTES MADE BY THE PSYCHIATRIST MEMBERS OF THE ADVISORY REVIEW BOARD AND ANY OTHER MEMBERS WHO, BEFORE THE REVIEW, INTERVIEW THE PATIENT, INTENDED FOR USE IN THE DELIBERATIONS CONDUCTED IN THE EXECUTIVE SESSION OF THE BOARD, BE PROTECTED FROM DISCLOSURE TO THE PATIENT OR HIS OR HER COUNSEL UNLESS THE BOARD, IN ITS DISCRETION, DECIDES OTHERWISE.

Comment:

OMA agrees with this recommendation and comments as follows:

"It is assumed that the Commissioner recognizes that there may be sensitive information that is collected and discussed by the Advisory Review Board that would be detrimental to the continuing care of the patient. It is interesting, however, that he recognizes that the patient should not have access to Review Board material but should have access to the medical record which could have equal and very often the same information that would be detrimental to the patient. This is another example of double standards recommended by the Commissioner."

The OHA agrees with the recommendation.

Recommendation:

Implement the recommendation.

87. THAT THE MENTAL HEALTH ACT BE AMENDED TO MAKE IT CLEAR THAT THE ADVISORY REVIEW BOARD, FOR THE PURPOSES OF ITS REVIEW OF CASES OF PATIENTS DETAINED UNDER THE AUTHORITY OF A LIEUTENANT-GOVERNOR'S WARRANT, HAS THE RIGHT TO INSPECT ANY INFORMATION IN THE HANDS OF THE PSYCHIATRIC FACILITIES IN WHICH THE PATIENTS ARE DETAINED, INCLUDING THE PATIENTS' CLINICAL RECORDS.

Comment:

The CPSO agrees and supports the recommendation. The OMA agrees that the Advisory Review Board should have access to all the information that will assist them in making a reasonable decision. The OHA agrees with the recommendation.

Recommendation:

Implement the recommendation.

88. THAT THE MENTAL HEALTH ACT BE AMENDED TO EXPRESS THE GENERAL RULE THAT, FOR THE PURPOSE OF A HEARING BEFORE THE ADVISORY REVIEW BOARD, THE PATIENT OR HIS OR HER COUNSEL HAS A RIGHT TO INSPECT THE PATIENT'S CLINICAL RECORD. IF THE ADMINISTRATOR OF THE PSYCHIATRIC FACILITY

TO WHICH THE PATIENT IS RELATED IS OF THE OPINION THAT, IN THE INTEREST OF THE PATIENT'S TREATMENT, RECOVERY, HEALTH OR SAFETY, OR THE HEALTH OR SAFETY OF ANOTHER PERSON, ACCESS TO THE CLINICAL RECORD OUGHT TO BE DENIED, THAT ISSUE SHOULD BE DECIDED BY THE CHAIRMAN OF THE ADVISORY REVIEW BOARD, WHOSE DECISION SHOULD BE SUBJECT TO REVIEW BY THE DIVISIONAL COURT OR A JUDGE OF THAT COURT.

Comment:

The CPSO agrees and supports the recommendation.

The OMA comments that it seems necessary to have some sort of appeal mechanism for the patient when there is a denial of access to the record because of the content and possible harmful effects.

The OHA agrees with the recommendation.

The Toronto General Hospital recommends that the information should be made available through the interpretation of the physician. Further, that if the patient is dissatisfied, then a physician of his/her choice could be given access to the record to provide information and interpretation of the data. The record should remain the legal property of the health-care provider as at present.

Recommendation:

Implement the recommendation.

89. THAT THE RECOMMENDATIONS OF THE ADVISORY REVIEW BOARD AND THE SUBSEQUENT DECISIONS OF THE CABINET BE TREATED CONFIDENTIALLY AND NOT BE MADE AVAILABLE FOR PUBLIC ACCESS.

Comment:

The CPSO agrees and supports the recommendation. The OMA agrees with the recommendation for the same reasons as they agree that patients should not have access to their whole health-care record. The OHA agrees with the recommendation.

Recommendation:

Implement the recommendation.

Chapter 25: Consent to Disclosure

90. THAT LEGISLATION PERMITTING DISCLOSURE OF HEALTH INFORMATION PURSUANT TO A PATIENT'S AUTHORIZATION:

    (A) BE IN WRITING AND CONTAIN THE ORIGINAL SIGNATURE OF THE SUBJECT OF THE HEALTH INFORMATION AS WELL AS THE ORIGINAL SIGNATURE OF A WITNESS;

    (B) BE DATED;

    (C) SPECIFY THE NAME OR DESCRIPTION OF THE RECIPIENT OF THE INFORMATION;

    (D) SPECIFY THE NAME OR DESCRIPTION OF THE PERSON OR INSTITUTION INTENDED TO RELEASE THE INFORMATION;

    (E) INCLUDE A DESCRIPTION OF THE INFORMATION TO BE DISCLOSED;

    (F) SPECIFY THE PURPOSE FOR WHICH THE INFORMATION IS REQUESTED;

    (G) INCLUDE AN EXPIRATION DATE OR TIME LIMIT FOR THE VALIDITY OF THE AUTHORIZATION; AND

    (H) SPECIFY THAT THE INDIVIDUAL MAY RESCIND OR AMEND THE AUTHORIZATION IN WRITING AT ANY TIME PRIOR TO THE EXPIRATION DATE, EXCEPT WHERE ACTION HAS BEEN TAKEN IN RELIANCE ON THE AUTHORIZATION.

Comment:

The CPSO disagrees with the recommendation in principle commenting that the detailed requirements are impractical and would not be observed.

The OMA agrees that a patient, prior to giving consent, should know what information is to be provided. The requirement that the signature be an original one is supported but will produce problems and frequently could be unworkable. There is no allowance for verbal exchange between physicians and/or other health care professionals. There is no reference to exceptions to cover the daily process of formal, informal or corridor consultation or informal discussion with medicine colleagues.

The OMA queries whether every consultant's letter would require the patient to sign a fillout report?

Another concern for physicians presents itself in recommendation 13 which provides for a severe fine for disclosure without consent, is combined with this recommendation. This could almost eliminate the free exchange of information, which could certainly be to the patient's detriment.

Although the OMA accepts in principle that the patient should be more informed about the information that will be transferred, they suggest the protocol may be too time-consuming and defeat the purpose.

The Ontario Chapter, College of Family Physicians of Canada considers the recommendation to be a good proposal.

The OHA agrees with the recommendation but suggest (b) it be clarified as to the date on which the authorization was signed.

Sudbury Memorial Hospital suggests the date should be in writing by the patient or guardian not typed as any date could be typed in at any time.

The Ontario Cancer Treatment and Research Foundation does not fully agree with the recommendation that the consent for disclosure must specify the name or description of the institution, a description of the information to be disclosed, the purpose for which the information is requested and the inclusion of an expiration date. It believes these requirements would needlessly hamper epidemiological research. Many epidemiological studies require access to medical information from several hospitals or organizations. This would require the signing of several consent forms. It is often difficult in epidemiological studies to describe to the person obtaining the consent forms, the precise information required without revealing to both the person collecting information and the patient the purpose of the study. The objectivity of the study is lost once the purpose is known in that the person collecting the information may bias the results by searching more thoroughly the history of the patient than a healthy, control individual. The inclusion of an expiration date is reasonable, provided it allows sufficient time to obtain the records requested as well as requesting them a second time to assess the quality and completeness of data collection. The concerns expressed are important in that the requirements in the recommendation may seriously restrict the availability of information for important epidemiological research.

The Ontario Association for the Mentally Retarded comment that they would find a standardized consent form as outlined in the recommendation most helpful and they believe it should apply to associations such as theirs. They point out the need for consistency between different Ministries in the approach to confidentiality.

OCHRA/OHRA agree with the recommendation but feel it should be specified that the date is the date of signing by the patient. Ontario Physiotherapy Association agrees with the recommendation.

Recommendation:

Implement the recommendation excluding normal verbal and written communications between the attending physician and other health care professionals involved in the care of the patient.

There should be consultation with the Ministry of Community and Social Services to ensure that the standard form of authorization for disclosure of health information apply to health information maintained by residential facilities that come under the jurisdiction of that Ministry.

It is believed recommendation 94 should satisfy the concerns of the Ontario Cancer Treatment and Research Foundation.

91. THAT A STANDARD FORM OF AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION, IN ACCORDANCE WITH CONDITIONS (A) TO (H) OF RECOMMENDATION 90, APPLY TO ALL HEALTH INFORMATION MAINTAINED BY HEALTH-CARE PROVIDERS, INCLUDING PSYCHIATRIC FACILITIES.

Comment:

The CPSO disagrees with the recommendation in principle feeling a standard form of authorization for disclosure would be impractical.

The OMA considers a standardized form is preferable to the present system which does produce a double standard of confidentiality, especially with hospitalized patients where psychiatric patients are treated differently from the others. While OMA supports a standardized form, if it becomes too complex this again might complicate the exchange of information and be counterproductive.

The Ontario Chapter, College of Family Physicians of Canada agrees with the recommendation.

The OHA and OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

92. THAT WHEN, IN THE OPINION OF THE HEALTH-CARE PROVIDER, THE PHYSICAL OR MENTAL CONDITION OF A PATIENT PREVENTS HIM OR HER FROM HAVING THE ABILITY TO UNDERSTAND THE SUBJECT MATTER IN RESPECT OF WHICH CONSENT IS REQUESTED AND FROM BEING ABLE TO APPRECIATE THE CONSEQUENCES OF GIVING OR WITHHOLDING CONSENT, AUTHORIZATION FOR THE DISCLOSURE OF THE INFORMATION MAY BE GIVEN BY THE PATIENT'S NEAREST NEXT-OF-KIN.

Comment:

The CPSO agrees and supports the recommendation. The OMA supports the surrogate giving of consent for an incompetent patient. However, the determination of competence is a matter of opinion and should be declared by the physician rather than other health care providers who may not be competent to render such an opinion.

OMA suggests the recommendation should state the nearest available next-of-kin to make it more practical.

OMA also queries what resource the patient would have if he or she disagrees with the decision re competency.

The Ontario Chapter, College of Family Physicians of Canada agrees with the recommendation.

The OHA agrees with the recommendation. The OCHRA/OHRA comment that legislation should not deal with this area of competency until definitions and responsibilities for determining competency are made. They say great care should be taken in this very controversial area.

The Association of Nursing Directors and Supervisors of Ontario Official Health Agencies comments that this recommendation is not practical when the next-of-kin is not available, not known, there is a language barrier, or the client does not wish the next-of-kin to be informed.

Recommendation:

Implement the recommendation.

93. THAT THE PARENT OR LEGAL GUARDIAN OF A PATIENT UNDER THE AGE OF 16 YEARS MAY AUTHORIZE THE DISCLOSURE OF HIS OR HER HEALTH INFORMATION TO A THIRD PERSON.

Comment:

The CPSO agrees and supports the recommendation but points out there may be reason to respect the wishes of an older child not to disclose information given in confidence.

The OMA supports the recommendation and comments it would clarify the current discrepancy in the Public Hospitals Act where a 16 year old can consent to treatment but cannot exercise control over the health information.

The Ontario Chapter, College of Family Physicians of Canada agrees with the recommendation. The OHA and OCHRA/OHRA all agree with the recommendation.

Recommendation:

Implement the recommendation.

Chapter 26: Research

94. THAT A HEALTH-CARE FACILITY BE PERMITTED TO DISCLOSE IDENTIFIABLE HEALTH INFORMATION TO A QUALIFIED RESEARCHER FOR THE PURPOSE OF A RESEARCH PROJECT WITHOUT THE CONSENT OF THE SUBJECTS INVOLVED, PROVIDED THAT APPROVAL HAS BEEN GRANTED BY AN APPROPRIATE HUMAN EXPERIMENTATION COMMITTEE WHOSE MEMBERS MUST NOT BE CONFINED TO THE PRINCIPAL INVESTIGATOR'S DISCIPLINE AND MUST INCLUDE ONE OR MORE REPRESENTATIVES OF THE PUBLIC, AND PROVIDES ALSO THAT THE HUMAN EXPERIMENTATION COMMITTEE HAS BEEN SATISFIED THAT THE PRINCIPAL INVESTIGATOR HAS MET THE FOLLOWING CRITERIA:

    (A) THE IDENFIFIABLE INFORMATION SOUGHT IS INDISPENSIBLE FOR THE PURPOSE OF THE RESEARCH PROJECT;

    (B) THE IMPORTANCE OF THE RESEARCH PROJECT, IN THE OPINION OF THE COMMITTEE, JUSTIFIES THE BREACH OF THE SUBJECT'S PRIVACY; AND

    (C) THE PRINCIPAL INVESTIGATOR UNDERTAKES

        (I) THAT HE OR SHE WILL PROVIDE ADEQUATE PHYSICAL SECURITY FOR THE INFORMATION;

        (II) THAT HE OR SHE WILL REMOVE OR DESTROY INFORMATION IDENTIFYING THE SUBJECT AT THE EARLIEST OPPORTUNITY COMPATIBLE WITH THE REQUIREMENTS OF THE RESEARCH PROJECT; AND

        (III) THAT HE OR SHE WILL NOT FURTHER DISCLOSE THE IDENTIFIABLE HEALTH INFORMATION EXCEPT TO PERSONS WHO MUST HAVE ACCESS TO IT FOR THE PURPOSE OF THE PROJECT, OR IN AN EMERGENCY SITUATION IN WHICH THERE IS A RISK TO THE LIFE OR SAFETY OF A SUBJECT OR ANOTHER PERSON, OR WHEN REQUIRED TO DO SO BY LAW.

Comment:

The CPSO disagrees with the recommendation in principle and feels identifiable health information should only be made available without the consent of the patient to a member of the staff of a facility who is qualified to do research.

The OMA supports the recommendation emphasizing the provision of subsections (a), (b) and (c)(ii) of the recommendation.

The OHA agrees with the recommendation. See comments under recommendation 90 outlining the concerns of the Ontario Cancer and Treatment Research Foundation.

OCHRA/OHRA comment that making the assumption that this is dealing with human research rather than record research, there should be no problem in including a record release authorization in the initial consent to treatment. With regard to record research, however, the researcher should only be allowed to abstract nonidentifiable patient data; otherwise a consent to release information should be required.

Ontario Physiotherapy Association feels that the consent of the subject, his representative or, in the case of minors, the parents, should be obtained prior to beginning of the research project.

Recommendation:

Implement the recommendation.

Chapter 27: The Unique Personal Health Identifier

95. (1) THAT, IF A UNIQUE HEALTH IDENTIFIER IS ADOPTED BY THE GOVERNMENT, ITS ADOPTION BE IMPLEMENTED ONLY IN CONJUNCTION WITH THE ESTABLISHMENT OF A CENTRAL DATA PROTECTION AGENCY RESPONSIBLE FOR AUTHORIZING THE USE OF THE UNIQUE HEALTH IDENTIFIER AND FOR APPROVING DATA LINKAGE BETWEEN FILES, ONE OR MORE OF WHICH USE THE UNIQUE HEALTH IDENTIFIER.

(2) THAT THE AGENCY BE RESPONSIBLE TO THE LEGISLATURE. ALL PROCEEDINGS OF THE AGENCY SHOULD BE OPEN TO THE PUBLIC.

(3) THAT IN DECIDING WHETHER A DATA BANK SHOULD BE AUTHORIZED TO USE THE UNIQUE IDENTIFIER, THE FOLLOWING QUESTIONS BE CONSIDERED:

(A) WHETHER THE DATA BANK FALLS WITHIN THE DEFINITION OF HEALTH INFORMATION PROMULGATED BY THE AGENCY; AND

(B) WHETHER ADEQUATE PLANS HAVE BEEN MADE TO ENSURE THE PHYSICAL SECURITY AND CONFIDENTIALITY OF THE DATA;

BOTH THE DEFINITION OF A HEALTH INFORMATION AND THE MINIMUM SECURITY GUIDELINES SHOULD BE PUBLISHED.

Comment:

The OMA supports the position that there are serious hazards in having a unique identifier, and if one is developed, careful safeguards must be provided.

The OHA agrees with the recommendation.

Sudbury Memorial Hospital queries where and how the definition of health information and the minimum security guidelines would be published.

The Ontario Cancer Treatment and Research Fundation is in favour of a unique personal health identifier both for linkage of records for the Ontario Cancer Registry and for the accurate followup of patients attending the Foundation centres. A universal Canadian number such as the Social Insurance Number assigned at birth or at immigration to Canada would facilitate identification of cancer patients diagnosed in Ontario, those cancer patients dying in other provinces, and would also be of benefit in many epidemiological studies of occupational and environmental carcinogens.

OCHRA/OHRA comment that with respect to recommendations 95 and 96 they are pleased to see the recommendation that this number should be unique and not the Social Insurance Number but it is important that no other identifier be linked with it, e.g. S.I.N. on the same form.

The Ontario Physiotherapy Association agrees with recommendations 95 and 96 but think any unique personal health identifier will be as hard to keep confidential as the Social Insurance Number.

Recommendation:

Implement the recommendation if a unique health identifier is adopted.

96. THAT, IF A UNIQUE PERSONAL HEALTH IDENTIFIER IS ADOPTED, IT SHOULD NOT BE THE SOCIAL INSURANCE NUMBER.

Comment:

The OMA strongly supports the recommendation commenting that the social insurance number is now required by several government departments and agencies and is also widely used by banks, schools and employers which are nonhealth related and could provide an easy linkage.

The OHA feels this recommendation requires further study.

Sudbury Memorial Hospital agrees with the recommendation.

The Ontario Cancer Treatment and Research Foundation comments that the potential abuse of the social insurance number as a unique personal identifier is applicable to all other unique health care numbers. Rather than implementing an entirely new unique number, it might be advisable to use the already existing social insurance number together with legislation restricting permissable linkages and substantial penalties for abuse.

Recommendation:

Accept the recommendation in principle subject to further consideration if and when a unique personal health identifier is adopted.

Chapter 28: Mandatory Reporting of Health Information

97. THAT ALL PERSONS ABOUT WHOM A MANDATORY REPORT IS MADE BE INFORMED, BY THE RECIPIENT, OF THE FACT THAT A REPORT HAS BEEN FILED, AND OF THE NATURE OF THE CONTENT OF THE REPORT. THE NAME OF THE PERSON FILING THE REPORT AND OTHER IDENTIFYING CHARACTERISTICS OF THE INFORMATION MAY BE DELETED IF THE REPORT WAS MADE IN CONFIDENCE.

Comment:

The CPSO disagrees with the recommendation in principle commenting that any actions taken would indicate that a report has been made and that the withholding of information as proposed in the recommendation would be inconsistent with a legal right of access to records.

The OMA has no objection to the recommendation. The Ontario Chapter, College of Family Physicians of Canada agrees with the recommendation. The OHA agrees with the recommendation.

Recommendation:

Implement the recommendation.

98. THAT LEGISLATION REQUIRING REPORTING BY HEALTH-CARE PROVIDERS NOT BE ENACTED UNLESS THE FOLLOWING CIRCUMSTANCES EXIST:

    (A) THE INFORMATION, IN AN IDENTIFIABLE FORM, IS NECESSARY TO PROTECT THE HEALTH AND WELL-BEING OF THE PUBLIC OR A SUBSTANTIAL NUMBER OF MEMBERS OF THE PUBLIC;

    (B) THERE IS NO OTHER METHOD BY WHICH THE PURPOSE COULD BE ACCOMPLISHED; AND

    (C) THE BENEFIT TO THE PUBLIC OR MEMBERS OF THE PUBLIC SOUGHT TO BE PROTECTED OUTWEIGHS THE RISK TO THE SUBJECTS OF THE REPORT FROM THE INVASION OF THEIR PRIVACY.

Comment:

The CPSO agrees and supports the recommendation.

The OMA supports the conditions that are set down for mandatory reporting, noting (b) as very important.

The Ontario Chapter, College of Family Physician of Canada agrees with the recommendation.

The OHA agrees with the recommendation.

Recommendation:

Implement the recommendation.

99. THAT THE DEPUTY MINISTER OF HEALTH OR A DESIGNATED OFFICIAL OF THE MINISTRY RESPONSIBLE FOR THE COLLECTION OF THE INFORMATION REVIEW, ANNUALLY, ALL REPORTING REQUIREMENTS TO DETERMINE:

(A) WHETHER THE PURPOSE OF THE REPORTING REQUIREMENT REMAINS VALID;

(B) WHETHER THE INFORMATION ACTUALLY BEING COLLECTED IS IN ACCORDANCE WITH THE PURPOSE OF THE REPORTING REQUIREMENT;

(C) WHETHER THE INFORMATION IS BEING USED IN A MANNER CONSISTENT WITH THE PURPOSE OF THE REPORTING REQUIREMENT; AND

(D) WHETHER ANY ALTERNATIVE METHODS OF ACHIEVING THE PURPOSE OF THE REPORTING REQUIREMENT WITHOUT USING IDENTIFIABLE INFORMATION ARE POSSIBLE.

Comment:

The CPSO disagrees with the recommendation in principle considering it impractical. The OMA supports the regular review of any legislation that demands mandatory reporting. The Ontario Chapter, College of Family Physicians of Canada agrees with the recommendation. The OHA agrees with the recommendation.

Recommendation:

Implement the recommendation.

100. THAT ALL MANDATORY REPORTING LEGISLATION CONTAIN A PROVISION THAT THE INFORMATION COLLECTED IS CONFIDENTIAL AND IS NOT TO BE DISCLOSED TO ANY THIRD PARTY NOT EXPRESSLY AUTHORIZED BY THE LEGISLATION UNLESS THE LAW OTHERWISE REQUIRES.

Comment:

The CPSO, OMA, Ontario Chapter, College of Family Physicians of Canada and the OHA all agree and support the recommendation.

Recommendation:

Implement the recommendation.

101. THAT THE SUBJECT OF A REPORT HAVE THE RIGHT TO REQUEST THAT ERRORS BE CORRECTED. IF THE COLLECTOR OF THE INFORMATION IS OF THE OPINION THAT NO CORRECTION SHOULD BE MADE, A RECORD OF THE DISPUTE SHOULD BE ATTACHED TO THE ORIGINAL RECORD AND INCLUDED WHEN A DISCLOSURE OF THE ORIGINAL RECORD IS MADE.

Comment:

The CPSO disagrees with the recommendation in principle noting that the subject is not qualified to "correct" medical information.

The OMA, Ontario Chapter, College of Family Physicians of Canada and the OHA all agree and support the recommendation.

Recommendation:

Implement the recommendation.

102. THAT THE METHOD OF PHYSICAL SECURITY ADOPTED FOR THE INFORMATION COLLECTED REFLECT THE SENSITIVITY OF THAT INFORMATION IN ACCORDANCE WITH THE FOLLOWING RULES:

(A) ONLY AS MUCH INFORMATION IN A PERSONALLY IDENTIFIABLE FORM AS IS NECESSARY TO FULFILL THE PURPOSE OF THE REPORTING REQUIREMENT SHALL BE COLLECTED AND MAINTAINED;

(B) PERSONALLY IDENTIFIABLE INFORMATION SHOULD BE DESTROYED AS SOON AS IT IS NO LONGER USEFUL. RETENTION SCHEDULES SHOULD BE DRAWN UP TAKING INTO ACCOUNT THE PURPOSE FOR WHICH THE INFORMATION IS COLLECTED; AND

(C) RECORDS THAT ARE TO BE STORED, SUCH AS, FOR EXAMPLE, COMMUNICATIONS FROM A LABORATORY TO A MEDICAL OFFICER OF HEALTH, SHOULD BE TRANSFERRED IN SUCH A MANNER THAT THEY ARE NEVER OUT OF THE CONTROL OF A PERSON RESPONSIBLE FOR THEIR SECURITY.

Comment:

The CPSO, OMA, Ontario Chapter, College of Family Physicians of Canada and the OHA all agree and support this recommendation.

Recommendation:

Implement the recommendation.

103. THAT, IN THE LIGHT OF THE EVIDENCE THAT THE PURPOSE FOR WHICH CASES OF GONORRHEA MUST BE REPORTED MAY NO LONGER JUSTIFY THE RISK FROM THE INVASION OF PRIVACY, THE REQUIREMENT OF REPORTING THEM BE CAREFULLY AND OBJECTIVELY RECONSIDERED.

Comment:

The CPSO, OMA, Ontario Chapter, College of Family Physicians of Canada and the OHA all agree and support the recommendation.

Recommendation:

Implement the recommendation.

Chapter 29: Student Health Information

104. THAT, WHERE A LOCAL PUBLIC HEALTH AGENCY ENTERS INTO AN AGREEMENT WITH A BOARD OF EDUCATION TO PROVIDE INSPECTION OR OTHER HEALTH SERVICES FOR STUDENTS OF THAT BOARD OF EDUCATION, THE AGREEMENT INCLUDE THE FOLLOWING PROVISIONS:

(A) THE CATEGORIES OF INFORMATION COLLECTED AND MAINTAINED IN THE HEALTH RECORD SHALL BE DISCLOSED BY THE COLLECTING AGENCY ON REQUEST;

(B) A PARENT OF A STUDENT, OR THE STUDENT, IF HE OR SHE IS 16 YEARS OF AGE OR MORE, HAS A RIGHT TO INSPECT HEALTH INFORMATION WITH RESPECT TO THAT STUDENT MAINTAINED BY THE LOCAL MEDICAL OFFICER OF HEALTH;

(C) AN AUTHORIZATION BY A PARENT, OR THE STUDENT, IF HE OR SHE IS 16 YEARS OF AGE OR MORE, SHALL BE REQUIRED FOR THE RELEASE OF HEALTH INFORMATION CONCERNING A STUDENT TO ANY PERSON NOT DIRECTLY INVOLVED IN THE HEALTH CARE OF THE STUDENT IN THE COLLECTING AGENCY;

(D) THE MEDICAL OFFICER OF HEALTH MAY DISCLOSE HEALTH INFORMATION THE AGENCY MAINTAINS ABOUT A STUDENT WITHOUT THE AUTHORIZATION DESCRIBED IN SECTION (C):

  (I) IF, IN HIS OPINION BASED ON CLINICAL JUDGEMENT, THE INFORMATION IS NECESSARY TO ALLEVIATE AN EMERGENCY AFFECTING THE HEALTH OR SAFETY OF A STUDENT; OR

  (II) TO THE MEDICAL OFFICER OF HEALTH OF ANOTHER LOCAL PUBLIC HEALTH AGENCY TO WITHIN THE JURISDICTION OF WHICH THE STUDENT HAS MOVED, PROVIDED THAT THE PARENT, OR THE STUDENT IF HE OR SHE IS 16 YEARS OF AGE OR MORE, HAS BEEN NOTIFIED OF THE INTENDED DISCLOSURE BEFORE IT OCCURS IN ORDER THAT HE OR SHE MAY HAVE THE OPTION TO PROHIBIT THE DISCLOSURE;

(E) ANY CONSENT TO RELEASE OF INFORMATION REQUIRED WITH RESPECT TO HEALTH INFORMATION SHALL STATE THE PERIOD OF TIME DURING WHICH THE CONSENT IS VALID, THE NATURE OF THE INFORMATION TO BE RELEASED, THE INDIVIDUALS OR AUTHORITIES TO WHOM THE INFORMATION IS TO BE RELEASED, AND THAT THERE SHALL BE NO FURTHER DISCLOSURE BY THE RECEIVING INDIVIDUAL OR AUTHORITY WITHOUT THE CONSENT OF THE PARENT, OR OF THE STUDENT, IF HE OR SHE IS 16 YEARS OF AGE OR MORE; AND

(F) THE MEDICAL OFFICER OF HEALTH SHALL BE RESPONSIBLE FOR CARRYING OUT PROCEDURES NECESSARY TO ENSURE THAT ANY HEALTH INFORMATION MAINTAINED WITH RESPECT TO A STUDENT IS TIMELY, ACCURATE AND RELEVANT TO ANY HEALTH OR RELATED REQUIREMENTS OF THE STUDENT FOR THE PURPOSES OF HIS EDUCATION, OR IN COMPLIANCE WITH PUBLIC HEALTH PROGRAMMES.

105. THAT PROVISIONS (A) TO (F) OF THE PRECEDING RECOMMENDATION APPLY TO THE MANNER IN WHICH INFORMATION CONCERNING A STUDENT GENERATED BY A PSYCHOLOGIST EMPLOYED BY A BOARD OF EDUCATION IS COLLECTED, MAINTAINED AND RELEASED, AND FOR THIS PURPOSE, THE TERMS, "DEPARTMENT OF PSYCHOLOGICAL SERVICES" AND "PSYCHOLOGIST" RESPECTIVELY SHALL BE SUBSTITUTED FOR THE TERMS, "LOCAL PUBLIC HEALTH AGENCY" AND "MEDICAL OFFICER OF HEALTH", IN THE PRECEDING RECOMMENDATION.

106. THAT THE RESTRICTIONS AND CONTROLS TO BE EXERCISED IN CONNECTION WITH STUDENT HEALTH INFORMATION APPLY WHETHER THE INFORMATION IS OBTAINED BY A PHYSICIAN OR ANY OTHER HEALTH-CARE PROFESSIONAL HAVING A DIRECT RELATIONSHIP WITH STUDENTS OR THEIR PARENTS, AND WHETHER OR NOT THE PROFESSIONAL PERSON IS EMPLOYED BY A LOCAL PUBLIC HEALTH AGENCY, BOARD OF EDUCATION OR OTHER AUTHORITY. WHERE THE HEALTH-CARE PROFESSIONAL INVOLVED IS AN EMPLOYEE OF ANY SUCH AUTHORITY, THE REQUIREMENTS SET OUT IN THIS CHAPTER, AS WELL AS THE ETHICAL REQUIREMENTS OF ANY PROFESSIONAL REGULATORY BODY OF WHICH THAT PERSON IS A MEMBER, SHOULD TAKE PRECEDENCE OVER ANY RIGHT OF ACCESS THE EMPLOYER MAY HAVE, EXERCISES, OR ATTEMPTS TO EXERCISE IN CONNECTION WITH HEALTH INFORMATION. HOWEVER, NO HEALTH-CARE PROFESSIONAL WHO RELEASES INFORMATION IN ACCORDANCE WITH THE CRITERIA I HAVE MENTIONED SHOULD, BY VIRTUE OF THAT RELEASE, BE CONSIDERED OR HELD TO BE IN BREACH OF ANY RULE RELATING TO PROFESSIONAL MISCONDUCT ESTABLISHED BY A PROFESSIONAL REGULATORY BODY.

Comment:

The CPSO is not persuaded that the health records of students are significantly different from other personal health records and feels that circumstances may arise where it may be in the best interests of the student, or others, for the Medical Officer of Health to disclose information which would otherwise be held in confidence. It is the opinion of the College that the requirement of confidentiality, control and access which apply in other settings should be observed in this context.

With respect to recommendation 104, it disagrees with all sections except (c), (e) and (f). It recommends that the general requirements of confidentiality and for consent to disclosure should be applied to school health records and that there should be no right of access to records by parents or student.

With respect to recommendation 105, it feels that the general requirements for access and control of health information should apply and that all school health information should be under the jurisdiction of the Medical Officer of Health.

With respect to recommendation 106, again the College feels the general requirement of confidentiality should apply and that judgements on professional misconduct should be made by the appropriate regulatory body.

With respect to recommendation 104, OMA comments that section (a) does not specify to whom the information will be disclosed; that in section (b) it is unclear whether parents of a student of any age in the public school system have a right to health information or just those under 16 years, OMA points out there are situations where students under the age of 16 years will seek, consent to and receive health counselling and care in confidence, independently of their parents. The realization of parent access to information could deny these students the care they require and wish; the OMA supports section (c) of the recommendation but questions the need for a written authorization to advise a school or a teacher of, for example, a hearing or vision problem; OMA supports section (d) of the recommendation providing for the transfer of information for emergency reasons and to providing the patient and/or parents with the opportunity to object to the transferring of information from one health unit to another but points out that the usual information that is transferred is immunization records and specific problems such as hearing or visual. OMA points out that the requirements set out in section (e) of the recommendation are similar to and concur with those of recommendations 90 and 91. OMA comments with respect to section (f) of the recommendation that where health information is part of a province-wide system such as CASH, responsibility for accuracy should be shared with provincial authorities.

With respect to recommendation 105, OMA comments students should have at least as much protection for information obtained by a psychologist as they do for that information held by a medical officer of health. OMA agrees with recommendation 106.

The Ontario Chapter, College of Family Physicians of Canada comment with respect to recommendations 104, 105 and 106 that the circumstances covered by these recommendations need to be looked at very carefully particularly in relation to the early identification programs being instituted across the province under the direction of the Ministry of Education. The Ontario Chapter is concerned at the trend in this direction, particularly the latitude being allowed local education authorities to interpret and institute Ministerial directions. The Ontario Chapter feels this represents a very serious hazard to students in their ongoing education and are making representation to the Ministry of Education directly and in conjunction with the Ontario Medical Association. The Ontario Chapter feels the activities of the Ministry of Education should be looked at in considering the full impact of these recommendations.

The OHA has made no comment considering the subject outside its field of interest and competence.

Sudbury Memorial Hospital - like the OMA questions who may request information (recommendation 104(a) and feels this should be specified. It also recommends that some reference should be made to an oath of confidentiality for all concerned in student health information including teachers.

The Ontario Board of Examiners in Psychology which generally supports the recommendations of the Report has offered no specific comment on these recommendations. See comments of Ontario Psychological Association to recommendation 13.

Recommendation:

It is recommended that the comments of the Ministry of Education should be obtained and that the advice of persons with experience in the field of school health services such as medical officers of health or school health physicians and educators should be obtained prior to reaching any decision about the implementation of recommendations 104, 105 and 106.

Chapter 30: Employee Health Information

107. THAT LEGISLATION BE ENACTED TO MAKE IT AN OFFENCE FOR AN EMPLOYER TO REVEAL ANY HEALTH INFORMATION CONCERNING ANY PRESENT OR FORMER EMPLOYEE TO A THIRD PARTY (UNLESS OTHERWISE REQUIRED BY LAW) WITHOUT THE CONSENT OF THE EMPLOYEE.

Comment:

The CPSO agrees and supports the recommendation.

The OMA agrees with the recommendation.

The Ontario Chapter, College of Family Physicians of Canada feels that the recommendations dealing with employee health information are ideas to be striven for. They will lead to an enormous reorganization of medical services in the workplace, and may lead to abandonment of these services by many employers, possibly to the detriment of the individual employee.

The OHA agrees with the recommendation as does the Sudbury Memorial Hospital. The College of Nurses of Ontario supports the recommendations of Chapter 30 of the report. WCB feels the qualifier "unless required by law" should apply to the Workmen's Compensation Board, thus allowing the employer to reveal the necessary health information to the Board, otherwise vital medical information which has a direct bearing not only on the medical aspects of the claim, but also on the Board's ability to adjudicate, or ability to place the worker in suitable employment, could be inaccessible to the Board.

Ontario Physiotherapy Association agrees with the recommendation.

Recommendation:

Implement the recommendation with due regard to the concern expressed by the Workmen's Compensation Board.

108. THAT ALL HEALTH INFORMATION BE STORED SEPARATELY FROM OTHER EMPLOYEE INFORMATION.

Comment:

The CPSO, OMA and OHA all agree with this recommendation although the OHA suggests it should be linked to confidential employee health information.

WCB agrees in principle that health information of a sensitive nature should be stored separately, but disagrees that this should be the case with all health information as they consider that keeping the employee's attendance, sick leave, visits to first aid, doctors, hospitals, dentists and other similar records in the employee's personnel file is a sensible and practical arrangement.

The question is whether the word "all" must be taken literally and, if not, what specific medical information should be stored separately. WCB considers it important that normal "supervisor-employee" relationships together with co-ordinating and counselling role of the personnel staff should be continued.

Recommendation:

It is recommended there should be consultation with the Ministry of Labour and the Workmen's Compensation Board before any decision is made with respect to this recommendation.

109. THAT ALL PERSONS HANDLING EMPLOYEE HEALTH INFORMATION BE GIVEN WRITTEN GUIDELINES RELATING TO THE CONFIDENTIALITY OF THE INFORMATION. THESE GUIDELINES, WHICH SHOULD BE ESTABLISHED BY THE MINISTRY OF LABOUR IN CONSULTATION WITH THE MINISTRY OF HEALTH, SHOULD DEAL WITH THE COLLECTION, RETENTION, STORAGE, SECURITY, ACCESS, DISCLOSURE AND DESTRUCTION OF IDENTIFIABLE EMPLOYEE HEALTH INFORMATION HELD BY EMPLOYERS.

Comment:

The CPSO, OMA and OHA all agree with this recommendation, the OMA pointing out that recommendations 107, 108, 109 and 110, all conform to the Canadian Medical Association's guidelines for occupational health physicians. WCB agrees with the recommendation but feel its opinion should be considered when guidelines are established.

Recommendation:

Implement the recommendation in consultation with the Ministry of Labour and the Workmen's Compensation Board.

110. THAT ALL HEALTH INFORMATION BE KEPT IN CABINETS WHICH SHOULD BE LOCKED AND ACCESSIBLE ONLY TO THOSE PERSONS DIRECTLY INVOLVED IN ADMINISTERING THE INFORMATION.

Comment:

The CPSO, OMA and OHA, all agree with the recommendation although the OHA suggests it should be limited to confidential health information and does not need to be kept in cabinets as long as the areas where kept are secure.

WCB objects to the word "all" (see comments under recommendation 108), but agree as far as staff records are concerned. WCB feels segregation of health information from other information in injured workers files is not a practical solution, as in the ongoing adjudication and review process all of the information must be together and readily available to various Board staff.

Recommendation:

Implement the recommendation in consultation with Ministry of Labour and with due regard for the concerns of the Workmen's Compensation Board.

111. THAT FOR AN INTERNAL TRANSFER OF INFORMATION WITHIN THE EMPLOYER, FROM ONE DEPARTMENT OR ONE SECTION TO ANOTHER, THE CONSENT OF THE EMPLOYEE BE OBTAINED.

Comment:

The CPSO, OMA, ONA, OHA, all agree with this recommendation.

WCB comments that the negative aspects of this unnecessary caution will delay the transfer of vital medical information which in turn would have an adverse effect upon medical evaluation of the injured worker's condition and jeopardize his or her health and safety.

Recommendation:

Implement the recommendation with due regard to the concern of the Workmen's Compensation Board.

112. THAT AN EMPLOYEE HAVE A RIGHT OF ACCESS TO ALL OF HIS OR HER HEALTH INFORMATION HELD BY AN EMPLOYER, INCLUDING A RIGHT TO REQUEST THAT CORRECTIONS BE MADE, IF NECESSARY, OR A NOTATION OF HIS OR HER OBJECTION.

Comment:

The CPSO disagrees with the recommendation in principle feeling that an employee should not have a right to access to health records.

The OMA feels that if corrections are to be made, they should be made only in substantiation that this information to be corrected is inaccurate.

OMA points out that free access would include consultants' reports where they existed and that the knowledge that these reports would be available to the employee could influence the content of the report. While OMA agrees that an employee should be able to view and question monitoring data or like information, physicians should interpret the information for the employee. Opinions and third party information should not be freely available to anyone but the physician who placed the information in the file.

The OHA agrees with the recommendation. Sudbury Memorial Hospital disagrees - corrections should not be made, rather an addendum or notation made. The WCB comments that their medical staff feels that access to medical documentation by any employee other than for the information supplied to the employer by the employee himself, should be based on the concurrence of the physician responsible for the generation of the document. Should that physician be not readily available, then another physician should determine whether any aspect of the information might present a hazard to the employee's health and well being.

WCB also feels that any corrections made by the employee should be of a non-technical, non-medical character as most laymen are not in a position to be expert and pass judgement in scientific medical/clinical matters and data.

Recommendation:

This recommendation requires consultation with the Ministry of Labour and possibly advice from experienced occupational health physicians before any decision is reached regarding its implementation. The decision may also be influenced by the decisions with respect to recommendations 82-85.

113. THAT THE RESULTS OF LABORATORY TESTING PERFORMED ON EMPLOYEES OR APPLICANTS FOR EMPLOYMENT BE SENT EITHER TO THE HEALTH PERSONNEL (IF ANY) OR TO THE PHYSICIAN REQUESTING THE TEST. NON-HEALTH PERSONNEL SHOULD NOT BE PERMITTED TO OPEN THE REPORTS OF THE TEST RESULTS.

Comment:

The CPSO disagrees with the recommendation in principle considering it impractical.

The OMA and the OHA agree with the recommendation.

The WCB feel the results of tests should usually be sent to the person who originates (authorizes) them.

WCB agree that non-health personnel should not be permitted to have access to the test result.

Recommendation:

I can agree with the recommendation if the term "health professional" can be interpreted to include secretarial staff assigned on a full-time basis to the personnel health service.

114. THAT THE SENDING OF EMPLOYEE HEALTH INFORMATION OUTSIDE THE PROVINCE OF ONTARIO BE PROHIBITED UNLESS ALL IDENTIFYING INFORMATION IS REMOVED.

115. THAT WHERE THE REASON FOR STORING THE INFORMATION OUTSIDE ONTARIO IS THAT IT BE USED FOR EPIDEMIOLOGICAL RESEARCH IN RESPECT OF THE EMPLOYER'S OPERATIONS, A CODE BE DEVISED TO ENABLE AN EMPLOYEE TO BE IDENTIFIED, BUT THE KEY TO THE CODE MUST BE RETAINED IN ONTARIO.

Comment:

The CPSO feels recommendations 114 and 115 are directed to matters outside the jurisdiction of the College.

The OMA feels this recommendation will create an unnecessary amount of paperwork for national companies who move information from one medical department to another, but agree with recommendation 115.

The OHA feels the recommendation should not preclude the reciprocal sending of information re prospective employees across provincial boundaries.

The WCB comments with respect to recommendation 114 that if the recommendation is meant to apply to Workmen's Compensation Board claim files, they disagree on the basis that this would serious interfere with the flow of vital information to other Canadian Workers' Compensation jurisdictions, treatment agencies and insurance companies located outside Ontario even with the authorization of the employee.

With respect to recommendation 115, WCB agrees that a code for identification of the employee be devised but feel that retention of the key to the code in Ontario will generate unnecessary controls. They suggest that where a code system is required, it should be controlled by the responsible researcher.

Recommendation:

I cannot believe that recommendation 114 is in the best interest of the employee and I feel there is a need for consultation with the Ministry of Labour with possible advice from experienced occupational health physicians before any decision is made to implement this recommendation.

Implement recommendation 115 if the Ministry of Labour agrees.

116. THAT LEGISLATION BE ENACTED TO MAKE IT CLEAR THAT A PROFESSIONAL EMPLOYEE'S DUTY OF CONFIDENTIALITY TRANSCENDS HIS OR HER DUTY TO OBEY AN EMPLOYER'S INSTRUCTIONS, WHERE THESE INSTRUCTIONS REQUIRE THE EMPLOYEE TO REVEAL INFORMATION HELD IN CONFIDENCE.

Comment:

The CPSO, the OMA and the OHA all support this recommendation. The OMA points out it is included in the Canadian Medical Association's Guide for Occupational Health Physicians.

The WCB agrees providing it is clearly spelled out in legislation that failure to reveal certain information does not place the employee or other persons in jeopardy. OCHRA/OHRA agree with the recommendation.

Recommendation:

Implement the recommendation.

117. THAT THE RESPONSIBILITY FOR THE STORAGE AND CONTROL OF HEALTH INFORMATION ABOUT EMPLOYEES BE DECLARED TO BE THAT OF THE HEALTH PROFESSIONALS EMPLOYED BY THE EMPLOYER, OR, IF THERE ARE NONE EMPLOYED, A PHYSICIAN DESIGNATED BY THE EMPLOYER.

Comment:

The CPSO, OMA and OHA all agree with this recommendation. The WCB agrees with this recommendation with regard to medical information of a sensitive nature. Routine references to absences from work for health reasons, visits to doctors, etc., if removed from the employees' personnel files will produce administrative problems, interfere with the control of absenteeism, etc.. It is considered important that the normal "supervisor-employee" relationships together with the co-ordinating and counselling role of the personnel staff should be continued. The Ontario Psychiatric Association feels that recommendation 117 should be broadened to include student health information and that the responsibility for storage and control of psychological records be maintained by a psychologist registered in the province in which the records are stored.

Recommendation:

Implement the recommendation with due regard to the concerns of the Workmen's Compensation Baord.

118. THAT THE EMPLOYER NOT BE ALLOWED ACCESS TO HEALTH INFORMATION ABOUT AN EMPLOYEE WITHOUT THE CONSENT OF THE EMPLOYEE CONCERNED.

Comment:

The CPSO, OMA and OHA all agree with the recommendation. The OMA agrees in the understanding that the physician or health-care worker responsible for the records is not included as the employer. The OHA feels the recommendation should apply only to "confidential" health information.

While WCB agree in principle that sensitive information should not be disclosed without the consent of the employee, non-disclosure of certain other health information in workers' compensation cases will cause delays and interfere with efforts to rehabilitate the worker (example: trying to place him in a suitable job).

It is considered important that the normal "supervisor-employee" relationships together with the co-ordinating and counselling roles of the personnel staff be continued.

Recommendation:

Implement the recommendation with due regard to the advice of the Workmen's Compensation Board.

119. THAT, WHERE IN THE OPINION OF A HEALTH PROFESSIONAL, DISCLOSURE OF CONFIDENTIAL INFORMATION IS NECESSARY BECAUSE OF A CLEAR DANGER TO THE EMPLOYEE, FELLOW EMPLOYEES, OR TO THE PRODUCT RESULTING IN A DANGER TO THE PUBLIC AND

(A) THE EMPLOYEE CONCERNED CONSISTENTLY REFUSES TO GIVE CONSENT, AND

(B) A SECOND OPINION IS OBTAINED FROM THE EMPLOYEE'S PERSONAL PHYSICIAN WHEN THE CONCERN IS FOR THE HEALTH OF THE EMPLOYEE, OR FROM THE MEDICAL OFFICER OF HEALTH WHEN THE RISK IS TO THE PUBLIC OR TO FELLOW EMPLOYEES, THE HEALTH PROFESSIONAL MAY MAKE THE DISCLOSURE TO THE PROPER PERSON AT MANAGEMENT LEVEL AFTER GIVING NOTICE IN WRITING TO THE EMPLOYEE, WHICH NOTICE SHALL INDICATE THE CONFIDENTIAL INFORMATION INTENDED TO BE DISCLOSED.

Comment:

The CPSO agrees with the recommendation pointing out it would be covered by the amendment proposed by the College in its comments in recommendation 23.

The OMA agrees with the principle of the recommendation but points out it is possible however, that a situation may develop where the clear danger is more immediate and there may not be time to go through the process as suggested in the recommendation. A second opinion should be obtainable from another physician if the employee's personal physician is not readily available or if there is not one.

The OMA also agrees with the provision of notice to the employee in writing, but again, if the situation is urgent there may not be time to do this prior to informing management.

The OHA agrees with the recommendation suggesting section (b) should be revised by adding, "or in urgent situations from any physician having knowledge of the circumstances."

OHA also recommends revision of the final section of the recommendation to read: "the health professional may make the disclosure to the proper person at management level. Notice in writing shall also be given to the employee indicating the confidential information disclosed."

The Sudbury Memorial Hospital also agrees that the second opinion should be obtainable from another physician if the employee's personal physician is not available. It agrees the notice should be in writing, but not necessarily in advance of the disclosure. The WCB agrees subject to comments re recommendations 108 and 116.

Recommendation:

Implement the recommendation with amendments recommended by the respondents provided the Ministry of Labour agrees.

120. THAT THE ONLY INFORMATION WHICH CAN BE GIVEN TO A PROSPECTIVE EMPLOYER AFTER A PRE-EMPLOYMENT MEDICAL EXAMINATION BE WHETHER THE APPLICANT IS FIT FOR THE EMPLOYMENT.

Comment:

The CPSO, OMA and OHA all agree with this recommendation. OMA points out it will be necessary for the physician, providing the pre-employment medical examination to be familiar with the type of employment and the employment surroundings.

WCB considers that prospective employers, particularly those willing to hire or re-employ handicapped workers, should not be deprived of reasonably detailed information regarding the worker's ability to perform specific duties on jobs.

Recommendation:

Implement the recommendation with due regard to the advice of the Workmen's Compensation Board.

121. THAT IF AN APPLICANT IS FIT WITH CERTAIN LIMITATIONS, THESE LIMITATIONS MUST BE STATED WITHOUT DISCLOSING THE REASONS FOR THE LIMITATIONS, FOR EXAMPLE, "UNABLE TO LIFT HEAVY LOADS OR LOADS ABOVE X POUNDS" OR "LIMITED BENDING".

The CPSO, OMA and OHA all agree with the recommendation. OMA comments that disclosing reasons should be only with the prospective employee's consent.

The WCB feels very strongly that the employer should be given sufficient information that will allow him to make a judgement decision whether the job applicant has the overall ability to perform the desired job. On this basis, certain details regarding the applicant's limitations would have to be disclosed to the employer. Ontario Physiotherapy Association agrees with the recommendation.

Recommendation:

Implement the recommendation with due regard to the advice of the Workmen's Compensation Board.

122. THAT WHERE A MEDICAL DEPARTMENT STAFFED BY HEALTH PERSONNEL IS MAINTAINED BY THE EMPLOYER, THE RESULTS OF THE EXAMINATION BE KEPT IN THE MEDICAL DEPARTMENT BUT NOT BE AVAILABLE TO THE EMPLOYER EXCEPT AS RECOMMENDED IN THE TWO PRECEDING RECOMMENDATIONS.

Comment:

The CPSO, OMA and OHA all agree with this recommendation.

The WCB agrees that the examination results should be kept in the medical department but disagrees with the limitations imposed by recommendations 120 and 121.

Recommendation:

Implement the recommendation.

123. THAT WHERE THE PRE-EMPLOYMENT EXAMINATION IS DONE BY A PHYSICIAN NOT EMPLOYED BY THE EMPLOYER, THE EMPLOYER PROVIDE THAT PHYSICIAN WITH A JOB DESCRIPTION SO THAT HE OR SHE MAY BE AWARE OF THE FITNESS REQUIREMENTS OF THE POSITION AND THAT A COPY OF THE RECOMMENDATION BE GIVEN TO THE APPLICANT.

Comment:

The CPSO, OMA and OHA all agree with this recommendation, the OMA with the proviso that where there is a company physician, that physicican is the person best qualified and able to state whether an employer or prospective employee is fit for a specific job.

The WCB comments that pre-employment examination results are at times essential for the adjudication of entitlement on the basis of aggravation of a pre-existing condition, and when determining the extent of relief to the employer under the second inquiry and enhancement fund.

WCB questions whether the majority of physicians will be prepared to take the time and effort to match a given job description to the physician's findings. Most physicians consider their prime responsibility to be to look after the health needs of their patients and tend to resist additional paperwork and what they consider unnecessary bureaucracy.

With few exceptions, job descriptions do not focus on the fitness requirements for a given position. A requirement for all employers to develop job descriptions would be a mammoth task.

Recommendation:

There should be further consultation with the Ministry of Labour, and the advice of experienced occupational health physicians should be obtained before making any decision to implement this recommendation.

124. THAT THE APPLICANT BE ENTITLED TO A COPY OF THE EXAMINING PHYSICIAN'S RECORD OF EXAMINATION IF HE OR SHE SO REQUESTS.

Comment:

Both the CPSO and the OMA disagree with this recommendation.

The CPSO feel that the applicant should not be entitled to receive a copy of the physician's record of examination; he or she should be entitled to receive a copy of the report except where, in the opinion of the examining physician, this would not be in the best interests of the applicant.

The OMA advise that the usual practice at present is for a copy of the examination record be sent to the prospective employee's personal physician at the request of the applicant. OMA feels the applicant is entitled to information and explanation from the examining physician but not to access to the record.

The OHA agrees with the recommendation provided it is qualified to indicate any cost for the additional record will be borne by the applicant.

The WCB questions whether most physicians will be willing to adhere to this action.

Recommendation:

This recommendation should not be implemented without further study by the Ministries of Health and Labour with advice from experienced occupational health physicians.

125. THAT WHERE THE RECOMMENDATION IS THAT AN APPLICANT IS NOT FIT FOR THE POSITION, AN EXPLANATION FOR THE RECOMMENDATION, INDICATING THE REASONS, BE GIVEN TO THE APPLICANT BY THE PHYSICIAN MAKING THE EXAMINATION, IF SO REQUESTED.

Comment:

The CPSO, OMA, and OHA all agree with this recommendation.

The WCB feels the onus should not be on the physician, but rather on some other person to make the explanation to the employee, either on the basis of the medical findings or other considerations.

Recommendation:

Implement the recommendation.

126. THAT WHENEVER AN EMPLOYEE IS REQUIRED TO UNDERGO A PERIODIC MEDICAL EXAMINATION OR A MEDICAL EXAMINATION BECAUSE OF A SUSPECTED HEALTH PROBLEM, AND AS A RESULT AN OPINION IS GIVEN THAT THE EMPLOYEE'S JOB SHOULD BE CHANGED, RECOMMENDATION 120 TO 125 APPLY.

Comment:

The CPSO, OMA and OHA all agree with this recommendation subject to comments already indicated for each of recommendations 120-125.

WCB agrees with the recommendation for workers in the mining and certain other industries (jobs) but does not agree that the onus should be on the physician.

Recommendation:

Implement the recommendation subject to reservation already indicated with respect to recommendation 124, i.e. after consultation with the Ministry of Labour and occupational health physicians.

127. THAT THE MINISTRY OF LABOUR IN CONSULTATION WITH THE MINISTRY OF HEALTH PREPARE A FORM THAT WILL BE SUFFICIENT TO:

(A) JUSTIFY AN EMPLOYEE'S ABSENCE; AND

(B) CERTIFY AN EMPLOYEE'S FITNESS TO RETURN TO WORK.

Comment:

The CPSO agrees with the principle of the recommendation. However, it believes the Ministry of Labour should set the requirements only - a prescribed form would be impractical. Furthermore, the College feels that physicians should only be expected to report factual information, not justify absence or certify fitness to work.

The OMA feels that physicians should be involved in the design of the form as they will be the ones required to use it.

The OHA agrees with the recommendation. Toronto General Hospital points out that the present practice is to accept the employee's physician's certificate and questions the practicality of a standard form. In view of the frequency of absenteeism, there could be delay in completion of a standard form and consequently of the employee returning to work.

The WCB agrees that such a form would be beneficial in cases where the absence is in excess of three working days pointing out that during shorter absences for sicknesses such as colds, a physician is often not involved in the treatment of the person.

WCB feels that in Workers Compensation cases, the existing WCB forms are adequate for the purpose stated.

WCB feels a form of standard design may also be in conflict with various computer systems and therefore the Ministry of Labour should develop the wording such a form should contain, but otherwise allow the employers to decide on the other features of the form.

WCB again stresses that it is important that the normal "supervisor-employee" relationships together with the co-ordinating and counselling roles of the personnel staff should be continued.

Recommendation:

Implement the recommendation in consultation with the Ministry of Labour with advice if required, from occupational health physicians.

128. THAT THE MEDICAL DEPARTMENT BE RESPONSIBLE FOR ACCEPTING MEDICAL CERTIFICATES FOR SHORT TERM SICKNESS AND ADVISING THOSE RESPONSIBLE FOR THE PAYMENT WHETHER OR NOT PAYMENT SHOULD BE MADE FOR THE PERIOD OF ABSENCE. THE CERTIFICATES SHOULD BE RETAINED AND FILED IN THE MEDICAL DEPARTMENT.

Comment:

The CPSO, OMA and OHA all agree with this recommendation.

Toronto General Hospital comments that payment is a management responsibility with the medical department acting in an advisory capacity.

The WCB comments that the recommendation appears to create a significant change in the normal "supervisor-employee" relationships and in the coordinating and counselling role of personnel staff.

It notes, too, that it would require a restructuring of the role of the Board's Human Resources Division in the administration of such employee benefits as attendance and sick leave credits and of the preliminary stages of long term disability benefits.

Recommendation:

Further consultation with the Ministry of Labour with the advice of experienced occupational health physicians and personnel directors is required before making a decision re this recommendation.

129. THAT WHERE THERE IS NO MEDICAL DEPARTMENT,

(A) DEPENDING ON THE SIZE AND ORGANIZATION OF THE EMPLOYER A SENIOR PERSON IN EACH DEPARTMENT, BRANCH OR UNIT BE GIVEN THE AUTHORITY REFERRED TO IN THE PRECEDING RECOMMENDATION; AND

(B) NO COPIES BE MADE OF THE CERTIFICATES, WHICH SHOULD BE KEPT IN A LOCKED CABINET.

Comment:

The CPSO, OMA and OHA all agree with this recommendation.

The WCB agrees to the recommended security measures otherwise see comments re previous recommendation.

Recommendation:

Implement the recommendation.

130. (1) THAT WHERE AN EMPLOYEE MAKES A CLAIM ON A SICKNESS AND ACCIDENT INSURANCE OR OTHER INSURANCE POLICY PROVIDED BY THE EMPLOYER, THE CLAIM FORM BE SENT DIRECTLY TO THE INSURANCE COMPANY AND NOT TO THE EMPLOYER.

(2) THAT THE EMPLOYER BE PROHIBITED FROM REQUESTING A COPY OF THE CLAIM FORM CONTAINING THE DIAGNOSIS FROM EITHER THE CLAIMANT OR THE INSURANCE COMPANY.

(3) THAT A SEPARATE FORM BE PREPARED FOR EMPLOYMENT INFORMATION NECESSARY TO COMPLETE THE CLAIM.

Comment:

The CPSO agrees with the recommendation.

The OMA comments that the recommendation will produce difficulties especially with companies that do have a medical department. It is important that the medical department monitor absenteeism of longer than five days. Without information as provided by the treating physician, an employee may return to a job for which he is unsuited because of illness. Medical departments will not be able to assist in rehabilitation of employees who have been off work for long periods of time without background information from the treating physician. It is important to keep medical information from non-medical people but this recommendation carries the process too far.

The OHA agrees with the recommendation as does the Sudbury Memorial Hospital.

The WCB feels that an employer should have the right to request a waiver from the worker to get access to either a copy of the worker's report or certain data on it.

In the opinion of the WCB, any procedure that makes exchange of information between the employer-worker, insurance carrier more cumbersome, will delay processing of claims and create dissatisfaction and complaints.

Recommendation:

No action should be taken to implement this recommendation until the concerns of the OMA and WCB have been clarified by consultation with the Ministry of Labour and with the advice of occupational health physicians.

131. (1) THAT WHERE THE EMPLOYER IS A SELF-INSURER OR ACTS AS AN AGENT FOR AN INSURANCE COMPANY FOR SICKNESS AND ACCIDENT BENEFITS, DOCUMENTS CONTAINING EMPLOYEES' HEALTH INFORMATION BE MAINTAINED SEPARATELY FROM OTHER RECORDS MAINTAINED BY THE EMPLOYER.

(2) THAT INFORMATION IN THESE DOCUMENTS NOT BE MADE AVAILABLE FOR USE IN MAKING EMPLOYMENT DECISIONS.

(3) THAT ACCESS NOT BE ALLOWED TO ANY OTHER EMPLOYEE OF THE EMPLOYER, INCLUDING HEALTH PERSONNEL, WITHOUT THE CONSENT OF THE INDIVIDUAL CONCERNED.

Comment:

The CPSO agrees with the recommendation.

The OMA agrees that records should be kept separate. However, with respect to section (2) of the recommendation, it points out that decisions for employment frequently need to be made on health information so it is difficult to understand why it would not be made available if it was pertinent. OMA further comments that the need to include health personnel in section (3) of the recommendation is not understood.

OHA questions the practicality of section (1) of the recommendation.

The WCB refers to its comments re the preceding recommendation. In addition it feels, that for the workers own sake, adequate information should be made available to the employer in cases where the worker's condition is considered to be incompatible with job demands or would present a safety hazard to other workers, or where absences from work create a staffing problem.

Recommendation:

There should be consultation with the Ministry of Labour and advice should be obtained from persons with experience in the field of occupational health before any consideration is given to implementing this recommendation.

132. THAT THE AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION ON A CLAIM FORM BE SO PHRASED AS TO MAKE IT CLEAR THAT THE ONLY INFORMATION REQUIRED RELATES TO THE DISABILITY FOR WHICH THE CLAIM IS MADE.

Comment:

The CPSO agrees with this recommendation.

The OMA in general agrees that only information relating to the disability should be made available, but is concerned that too narrow an interpretation of the recommendation could lead to difficulties. Many absences directly related to alcohol abuse are covered by diagnosis such as gastritis, pancreatitis, seizures, falls, etc. Many companies have alcohol recovery programs in which it is clearly stated that alcoholism is recognized as a disease and every effort is made to get the employee in a rehabilitation program. If the physician feels he cannot mention alcohol abuse as a related problem many employees will not get the treatment required.

OHA agrees with the recommendation.

The WCB comments that while the recommendation seems to be appropriate for claims directed to insurance companies, the restrictions imposed by it would deprive the Board of information relating to other medical conditions (even if non-compensable) if the worker's treatment program is to be planned and carried out properly. It would also interfere with accurate adjudication of claims, prompt payment of compensation benefits, treatment and vocational rehabilitation (placement) of the worker.

WCB feels there should be no intermediary party interposed which would make judgement decisions as to what medical information is or is not germaine. These decisions should be left to the physician.

Note also WCB's comments re recommendation 107.

Recommendation:

There should be consultation with the Ministry of Labour and the advice of experienced occupational health physicians should be sought in reaching a decision whether to implement this recommendation.

133. THAT INFORMATION RELATING TO HEALTH AND ACCIDENT CLAIMS OF EMPLOYEES PROVIDED BY AN INSURANCE COMPANY TO AN EMPLOYER, CONSIST OF STATISTICAL INFORMATION ONLY WITHOUT IDENTIFYING EMPLOYEES, EXCEPT WHEN GIVEN TO THE MEDICAL DEPARTMENT OF THE EMPLOYER.

Comment:

The CPSO, OMA and OHA all agree with this recommendation. The WCB agrees in principle.

Recommendation:

Implement the recommendation.

134. THAT WHERE INFORMATION WHICH IDENTIFIES EMPLOYEES IS GIVEN TO THE MEDICAL DEPARTMENT, IT SHALL NOT BE AVAILABLE FOR USE IN MAKING EMPLOYMENT DECISIONS.

Comment:

The CPSO agrees with this recommendation.

The OMA has already indicated in comments to previous recommendations its opinion that health information may be important to job allocation of the employee and lack of knowledge of an employee's health problems may create a hazard for the employee and or fellow workers.

OHA suggests the recommendation be qualified by adding " ... unless the employee consents".

Sudbury Memorial Hospital agrees with the revision suggested by the OHA.

WCB comments that the employer requires information which will allow him to make a proper judgement decision regarding the worker's ability to perform certain duties and again expresses concern that "supervisor-employee" relations and the coordinating and counselling roles of the personnel staff be maintained.

Recommendation:

There should be consultation with the Ministry of Health and the advice of experienced occupational health physicians should be obtained to reach a decision regarding the acceptance of this recommendation.

135. THAT WHERE THE EMPLOYER MAINTAINS A MEDICAL DEPARTMENT, ALL REQUESTS FROM THE WORKMEN'S COMPENSATION BOARD FOR INFORMATION RELATING TO PREVIOUS SIMILAR DISABILITIES BE DIRECTED TO THE MEDICAL DEPARTMENT.

Comment:

The CPSO, OMA and OHA, all agree with this recommendation.

WCB agrees in principle but points out that the exclusion of other sources in Worker's Compensation cases would likely cause delay in the adjudication process

Recommendation:

Implement the recommendation with due regard for the concern of the WCB.

136. THAT WHERE MEDICAL INFORMATION IS FORWARDED TO THE WORKMEN'S COMPENSATION BOARD, A COPY BE GIVEN TO THE CLAIMANT.

Comment:

The CPSO agrees with the recommendation.

The OMA comments this would produce considerable paperwork most of which would be useless and would increase the cost of the whole system including added support for the Post Office. OMA suggests employees wishing access to WCB reports should do so through the WCB. When desirable and on request, copies of WCB reports from occupational health physicians could be sent to the employee's personal physician.

OHA also suggests that these reports should be made available to the employee if requested, from the Workmen's Compensation Board.

Sudbury Memorial Hospital feels this is unnecessary paper work.

The WCB comments that considering that a certain amount of medical information also appears on the Employee's Accident Report, Form 7 and on Medical Aid account forms, the Board requires an accurate definition of the term "medical information".

In principle, the WCB agrees that a copy of such medical information should be supplied if the worker requests it but again questions whether most physicians would be willing to follow the recommended action. Should the Board be required to provide the copies, this would create serious administration problems for the Board.

Note also WCB's response to recommendation 142.

Recommendation:

There should be consultation with the Ministry of Labour with advice from occupational health physicians and Workmen's Compensation Board before any decision is made regarding acceptance or otherwise of this recommendation.

137. THAT WHERE NO MEDICAL DEPARTMENT IS MAINTAINED BY THE EMPLOYER, NO INFORMATION RELATING TO PREVIOUS SIMILAR DISABILITIES BE FORWARDED TO THE WORKMEN'S COMPENSATION BOARD, WITHOUT THE AUTHORIZATION OF THE CLAIMANT.

Comment:

The CPSO agrees with the recommendation.

OMA offers no comment.

OHA is opposed to the recommendation but has not stated reasons.

WCB comments that seeking the worker's authorization will delay the adjudication process.

If authorization is not provided, the Board will not be able to assess the claim properly and determine the extent of relief to the employer under the Second Injury and Enhancement Fund.

WCB feels there should be no intermediary party interposed which would make judgement decisions as to what medical information is or is not germaine. These decisions should be left to the physician.

Recommendation:

This recommendation requires consultation with the Ministry of Labour with advice from occupational health physicians and representatives of the Workmen's Compensation Board before any decision re acceptance or otherwise.

138. THAT WHERE AN EMPLOYER HAS A MEDICAL DEPARTMENT, THOSE PERSONS RESPONSIBLE FOR ADMINISTERING WORKMEN'S COMPENSATION CLAIMS ON BEHALF OF THE EMPLOYEES BE MADE PART OF THE MEDICAL DEPARTMENT. THE PERSONS WHO BECOME PART OF THE MEDICAL DEPARTMENT, WITH THE IMPLEMENTATION OF THIS RECOMMENDATION, SHOULD BE DENIED ACCESS TO OTHER RECORDS GENERATED BY THE MEDICAL DEPARTMENT.

Comment:

The CPSO agrees with the recommendation.

The OMA has elected not to comment.

OHA questions if the recommendation is practical.

WCB comment they do not understand the rationale behind the recommendation and feel that whoever is responsible for the administration of Worker's Compensation claims would be bound by the rules regarding access to and confidentiality of health information.

In the opinion of WCB, the recommended action would require cumbersome and impractical procedures.

WCB points out that in many companies, the person in charge of the personnel function, or the plant manager, has the overall responsibility for the administration of Workmen's Compensation matters.

Recommendation:

There should be consultation with the Ministry of Labour and the advice of experienced occupational health physicians should be sought to assist in making a decision whether or not to implement this recommendation.

139. THAT WHERE THERE IS NO MEDICAL DEPARTMENT, THE PERSONS RESPONSIBLE FOR PROCESSING THE CLAIMS ON BEHALF OF THE EMPLOYER ENSURE THAT THE CLAIMS ARE KEPT SEPARATE FROM OTHER RECORDS AND THE CLAIMANT, AND ARE NOT ACCESSIBLE TO OTHER PERSONNEL.

Comment:

The CPSO, OMA and OHA all agree with this recommendation.

WCB is not in favour of segregating the information in the employee's personnel file as this file is already considered confidential.

Recommendation:

Implement the recommendation.

140. THAT WHERE A CLAIM IS TRANSFERRED FROM WORKMEN'S COMPENSATION TO A CLAIM UNDER SICKNESS AND ACCIDENT BENEFITS OR SHORT TERM ILLNESS BENEFITS, THE CLAIMANT BE ADVISED AND HIS OR HER CONSENT BE OBTAINED BEFORE HIS OR HER HEALTH INFORMATION IS TRANSFERRED.

Comment:

The CPSO agrees with the recommendation.

The OMA does not disagree with the recommendation but points out it could slow down the provision of benefits so the employee may experience delay in recovering payment because of the need for information transfer requiring his or her consent.

WCB agrees in principle but points out that failure to give consent would likely mean no sickness and accident benefits to the workers.

Recommendation:

Implement the recommendation in consultation with the Ministry of Labour with due regard to the concern expressed by the OMA, and the WCB.

141. THAT THE HEALTH INSURANCE ACT 1972 BE AMENDED TO MAKE IT POSSIBLE FOR ANY AUTHORIZED REPRESENTATIVE OF A PERSON, PERSONALLY ENTITLED TO INFORMATION FROM OHIP TO RECEIVE ANY INFORMATION THAT PERSON MAY RECEIVE.

Comment:

OMA has no objection to the recommendation but comment they are not certain of all the implications.

The WCB agree on the understanding that the reasons for the requested access will be adequately identified and the authorization properly completed.

Recommendation:

Consultation is required with the Health Insurance Division of the Ministry of Health before any decision whether or not to implement this recommendation.

Chapter 32: The Workmen's Compensation Board

General Comment:

The Ontario Chapter, College of Family Physicians of Canada comments in general about the recommendations contained in this chapter, that the only issue that comes out of any of the recommendations contained in this and the succeeding Chapter 33. (The Occupational Health and Safety Act, 1978) is once again, that an over-rigid interpretation could jeopardize the immediate and long term health of an employee where there is difficulty in obtaining consent for transfer of information either at all with a reasonable length of time.

General Recommendation:

There should be consultation with the Ministry of Labour, the Workmen's Compensation Board and experienced occupational health physicians, before any decision is reached with regard to the implementation of recommendations 142-153 set out in Chapter 33 of the report.

142. (1) THAT WHEN A REPORT CONTAINING MEDICAL INFORMATION ABOUT A CLAIMANT IS SENT TO THE WORKMEN'S COMPENSATION BOARD PURSUANT TO SECTION 52 OF THE WORKMEN'S COMPENSATION ACT, A COPY OF THE REPORT BE SENT TO THE CLAIMANT FREE OF CHARGE.

(2) THAT WHEN IN THE OPINION OF A HEALTH-CARE PRACTITIONER, SENDING A COPY OF THE REPORT WOULD BE DETRIMENTAL TO THE PHYSICAL OR MENTAL HEALTH OF THE CLAIMANT, AN APPLICATION BE MADE BY THE HEALTH-CARE PRACTITIONER TO THE HEALTH COMMISSIONER, REFERRED TO IN RECOMMENDATION 83, FOR AN EXEMPTION FROM THE OBLIGATION TO FORWARD A COPY OF THE REPORT TO THE CLAIMANT.

Comment:

The WCB comments that the recommendation is ambiguous as it does not clearly state whether the copy should be sent to the worker by the health care practitioner on the Board.

If the physician is to provide the copy, the Board could design a snap set for the various standard medical reports of which a copy could be sent by the physician to the worker, but as previously mentioned in recommendations 124 and 136, questions whether most physicians will be willing to participate in this undertaking. The question of enforcement has not been addressed.

Should the Board be required to provide the copy, this would have a substantial impact on the Board. On the basis of an average of five medical reports (and this figure is likely conservative) in each of the approximately 200,000 lost time claims per year, without even considering claims still active after the first year, or those which are reopened for additional consideration, this requirement would necessitate providing a volume of 1,000,000 plus reports a year, free of charge.

The Board's medical staff disagree with the recommendation on the basis that it will generate time wasting documentation, and release of confidential medical information from files where it can be readily controlled. Upon access to this information, through mishandling of it by the patient, blame could be wrongly attached to the source which generated the report. Furthermore, the Board's medical staff are concerned about the interposition of a new professional health commissioner in determining what medical data should or should not be withheld, as they feel that the primary responsibility should rest with the physicians generating the reports.

From a legal point of view, there may be some conflict (in sending a copy of the report made pursuant to Section 52 to the worker in every case) with the regulations to the Health Disciplines Act. At present, it is understood the patient may demand a report from the doctor, but such a report may not necessarily be the same report as the doctor sends to the Board.

There also appears to be a conflict between the recommendations in Professor Weiler's report and those in the Krever report, or it may be that the Board would send a controversial report to the physician who would then have the right to bring an application before the health commissioner for exemption. What happens if the health care practitioner has died or left Ontario, should a report to which access has been denied by the health commissioner be subsequently used in the adjudication process, this could be interpreted as a denial of natural justice.

The CPSO agrees with part 1 of the recommendation, but disagrees with part 2 commenting it should be left to the practitioner to decide whether it would be in the best interests of the patient to have a copy of the report.

The OMA is opposed to part 1 of the recommendation feeling it would produce considerable useless paper work and affect the information that would be placed in this report.

OMA feels it is unlikely that a physician would place any questionable information in the report and would not be interested in appealing to a health commissioner to have certain information excluded.

OMA feels this recommendation would likely lead to mediocre and often uninformative reporting.

The OHA, Toronto General Hospital and Sudbury Memorial Hospital are all opposed to the recommendation. The OCHRA/ OHRA feel it should be clarified whether these are reports from health care facilities regarding patients or reports from an employer regarding an employee.

Recommendation:

See general recommendation above.

143. **THAT SECTION 99 OF THE WORKMEN'S COMPENSATION ACT BE REPEALED.**

Comment:

The WCB comments that section 99 of the Workmen's Compensation Act was designed as recommended by Justice McGillivray to provide protection against suits for libel and slander for practitioners submitting reports to the Board in good faith. If this section of the Act is repealed, some other provisions will have to be enacted to achieve the same result.

The CPSO disagrees and feels the section which provides protection for the physician should be retained. The OMA disagrees for the same reasons.

Recommendation:

See general recommendation at the beginning of the chapter.

144. **THAT THE CLAIMANT AND ANY PERSON HE OR SHE CHOOSES TO REPRESENT HIM OR HER BE ALLOWED ACCESS TO THE MEDICAL RECORDS IN HIS OR HER FILE AT ANY TIME UNLESS A RECOMMENDATION HAS BEEN MADE BY THE HEALTH COMMISSIONER THAT IT WOULD BE DETRIMENTAL TO THE CLAIMANT TO SEE THE RECORDS OR ANY PART THEREOF.**

Comment:

WCB comments that having regard for recommendation 146 and Professor Weiler's suggestion that full access be granted to both the employee and the employer, we feel that limiting the employer's access as explained in recommendation 146, will amount to denial of natural justice.

WCB is also concerned about access to information in files established prior to the implementation date of any legislation based on Justice Krever's recommendation. Although the report does not say what, if any access, to old files should be granted, WCB is of the opinion that eventually, access to all records will have to be granted at the appeals level. For these reasons the matter requires further examination.

The CPSO disagrees with the recommendation and considers access to medical records should be a decision made by the medical authority responsible for the confidentiality of the records.

The OMA disagrees with the recommendation considering full access is unacceptable for reasons already stated.

Recommendation:

See general recommendation at the beginning of the Chapter.

145. THAT WHERE THE FINDING OF THE HEALTH COMMISSIONER IS THAT IT WOULD BE DETRIMENTAL TO THE CLAIMANT TO SEE A PARTICULAR REPORT, ACCESS BE ALLOWED TO ANY OTHER REPORT IN THE BOARD'S FILE.

Comment:

WCB points out that some of the other reports may also be of a highly sensitive nature. The recommendation would restrict the present practice of granting full access to certain representatives of the employee and the employer once the file has entered the appeals system.

Once again WCB expresses concern that the present supervisor-employee relationship and the coordinating and counselling roles of the personnel staff should be maintained.

The CPSO disagrees for reasons already stated. The OMA similarly disagrees.

Recommendation:

See general recommendation at the beginning of the Chapter.

146. THAT THE EMPLOYER AND ANY PERSON THE EMPLOYER CHOOSES AS A REPRESENTATIVE BE ALLOWED ACCESS TO MEDICAL RECORDS ON THE FILE WHERE THE BOARD IS SATISFIED THAT,

(A) THERE IS AN APPEAL FROM A DECISION OF THE CLAIMS
ADJUDICATION BRANCH; AND

(B) THE EMPLOYER HAS A GENUINE INTEREST IN THE APPEAL.

(C) THE ACCESS SHOULD BE RESTRICTED TO THOSE MEDICAL REPORTS OR THOSE PORTIONS OF THE MEDICAL REPORTS THAT ARE RELEVANT TO THE ISSUE IN THE APPEAL.

Comment:

WCB agrees that to avoid denial of natural justice, if full access is to be granted to the employee, the employer should have the same rights.

Should the above argument be overruled, WCB would still have problems with the term "genuine interest". For example, the Ombudsman has on occasion maintained that the employer has no interest in the appeal unless he is faced with a Section 86(7) charge, even though he is a party to an appeal in the eyes of the Divisional Court as a person with sufficient interest to apply for judicial review.

The employer has the right to appeal any aspect of the employee's claim. Therefore, WCB considers the employer would have a "genuine interest" in any appeal filed by his employees as well as in those initiated by the employer.

The other concept that creates a problem in the view of the WCB is the concept that access be restricted to medical reports relevant to the issues under appeal. The relevant issue in the appeal is defined at the start of the appeal, however, it often happens that subsidiary issues arise in the course of the appeal. Does the recommendation allow the employer access to medical information with respect to subsidiary issues arising in the appeal or restrict it to the "initial" issue of the appeal?

WCB feels that implementation of this aspect of the recommendation would result with respect to Section (b) of the recommendation, in more restrictions, as at the present time employers' legal representatives "at arms length" are privileged to see the entire file including all medical reports. The Ontario Physiotherapy Association query who would be the judge.

The CPSO disagrees with the recommendation feeling that the general requirements of confidentiality should apply.

The OMA feels that access should be restricted to those medical reports or those portions of medical reports that are relevant to the issue in the appeal. With respect to recommendations 144, 145 and 146, OMA agrees with employee and employer access to pertinent information from the medical record held by the WCB, only when there is an appeal.

The OHA and the Toronto General Hospital agree with the recommendation.

Recommendation:

See general recommendation at the beginning of the chapter.

147. (1) THAT THE CORONERS ACT, 1972 BE AMENDED TO ALLOW THE CORONER TO FORWARD TO THE WORKMEN'S COMPENSATION BOARD A COPY OF THE POST MORTEM EXAMINATION REPORT WHEN THE REPORT IS REQUIRED BY THE BOARD, TO ENABLE IT TO DETERMINE A CLAIM FOR COMPENSATION BY DEPENDENTS OF THE DECEASED.

(2) THAT WHERE A COPY OF THE REPORT IS FORWARDED TO THE BOARD THE CLAIMANT OR HIS OR HER REPRESENTATIVE BE ALLOWED TO HAVE ACCESS TO IT.

(3) THAT WHERE AN EMPLOYER IS INVOLVED IN THE APPEAL PROCESS THE EMPLOYER AND ANY REPRESENTATIVE OF THE EMPLOYER BE ALLOWED ACCESS TO THE REPORT, IF IT IS RELEVANT TO AN ISSUE IN THE APPEAL.

Comment:

The WCB agrees with section (1) of the recommendation. It agrees with section (2) provided that access is allowed following an adverse decision made by the Review Board of the operation division. It agrees with section (3) subject to comments to recommendation 146 above.

The CPSO agrees with section (1) of the recommendation but disagrees with sections (2) and (3) and feels that the general requirements of confidentiality should apply.

The OMA has reservations but neither agrees or disagrees, merely expressing an opinion that it requires further study.

The OHA agrees with the recommendation.

Recommendation:

See general recommendation at the beginning of the Chapter.

148. THAT WHEN A MEDICAL REPORT IS FORWARD TO ANY PHYSICIAN BY THE BOARD OR BY STAFF PHYSICIANS AT THE BOARD'S HOSPITAL AND REHABILITATION CENTRE, A NOTICE TO THIS EFFECT BE SENT TO THE CLAIMANT.

The WCB feels that the requirement is cumbersome, time consuming and will delay not only admissions to the Board's Hospital and Rehabilitation Centre, but will also create unwarranted leakage of certain data. WCB also feels it might interfere with the prompt vocational rehabilitation of the injured worker.

The CPSO disagrees with the recommendation commenting that the general requirement of confidentiality should apply.

The OHA agrees with the recommendation.

Recommendation:

See general recommendation.

149. (1) THAT INFORMATION GIVEN TO A COMPANY PHYSICIAN RELATE ONLY TO THE REHABILITATION NEEDS OF THE CLAIMANT OR TO SUSPICION OF EXPOSURE TO CONTAMINANTS USED IN THE MANUFACTURING PROCESS OF THAT EMPLOYER.

(2) THAT BEFORE INFORMATION ABOUT A CLAIMANT IS GIVEN TO A COMPANY PHYSICIAN, THE CONSENT OF THE CLAIMANT TO THE RELEASE OF THIS INFORMATION BE OBTAINED AFTER HE OR SHE HAS BEEN GIVEN THE OPPORTUNITY TO SEE WHAT INFORMATION IS BEING FORWARDED AND TO INDICATE DISAGREEMENT WITH ANY PART OF IT.

(3) THAT THE RECOMMENDATIONS RELATING TO EMPLOYEE HEALTH INFORMATION GENERALLY APPLY TO INFORMATION OF THIS KIND.

Comment:

The WCB agrees with section (1), if the information to be provided to the company physician includes the diagnosis, the clinical findings and data as to residual degrees of impairment which will affect employability.

WCB is opposed to section (2) and consider it will cause inordinate delays and may jeopardize the health and well-being of the patient.

WCB believes the recommendation, if implemented, would have major impact on the Board's Vocational Rehabilitation Division. Procurement of waivers with detailed description as to the material to be divulged would become prerequisite. The worker would have to acknowledge by signature that he or she is in agreement that certain material be released. This in turn would present additional problems with translation and interpretation.

The CPSO agrees with the recommendation.

The OMA comments that the reference to company physician suggests that the physician is under control of the company and would not have the best interests of the employee. Efficient and satisfactory rehabilitation requires co-operation between the employee, the WCB, the occupational physician and the employer. This requires storing of information as well as trust.

OMA believes section 2 of the reocmmendation, if implemented, will slow the process further, delay the rehabilitation program and the worker's return to work as well as adding to the expense.

OHA agrees with sections (1) and (3) of the recommendation but disagrees with section (2) and believes it would be detrimental.

Recommendation:

See general recommendation.

150. (1) THAT THE WORKMEN'S COMPENSATION ACT and THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1978 BE AMENDED TO ALLOW FOR AN EXCHANGE, BETWEEN THE MEDICAL SERVICES DEPARTMENT OF THE WORKMEN'S COMPENSATION BOARD AND THE OCCUPATIONAL HEALTH AND SAFETY DIVISION OF THE MINISTRY OF LABOUR, OF INFORMATION THAT RELATES TO THE EPIDEMIOLOGY OF INDUSTRIAL DISEASS AND OF PARTICULAR DISABILITIES SUFFERED BY CLAIMANTS.

(2) THAT WRITTEN GUIDELINES RELATING TO THE EXTENT OF THE EXCHANGE OF INFORMATION BE PREPARED BY THE WORKMEN'S COMPENSATION BOARD AND THE OCCUPATIONAL HEALTH AND SAFETY DIVISION.

(3) THAT ANY INFORMATION THAT IS EXCHANGED BE SUBJECT TO THE PROVISIONS OF THE RESPECTIVE ACTS PROHIBITING FURTHER DISCLOSURE.

Comment:

WCB agrees with the recommendation but suggests that the prohibitive provisions mentioned in section (3) be worded in a way that does not impede scientific research.

OMA agrees with the recommendation provided there is no patient identification. Ontario Physiotherapy Association agrees witht the recommendation.

Recommendation:

Implement the recommendation.

151. THAT THE SUBROGATION DEPARTMENT OF THE WORKMEN'S COMPENSATION BOARD REFUSE TO PROVIDE ANY INFORMATION TO PRIVATE INVESTIGATORS. THE DEPARTMENT SHOULD DEAL ONLY WITH LICENSED INSURANCE ADJUSTERS, INSURANCE COMPANIES, OR SOLICITORS IN ATTEMPTS TO SETTLE ITS SUBROGATED CLAIMS.

Comment:

The WCB agrees with the recommendation and comments that it describes the principles the Board has followed for many years not to supply information to private investigators.

Recommendation:

It appears no action is required.

152. THAT BEFORE THE BOARD RELEASES ANY MEDICAL REPORT IT HAS IN ITS POSSESSION TO ANY PERSON, AGENCY OR COMPANY TO FURTHER A CLAIM FOR A PENSION ENTITLEMENT OR FOR THE PAYMENT OF MONIES PURSUANT TO AN INSURANCE POLICY BY A CLAIMANT, IT MUST HAVE A CONSENT FOR THE RELEASE SIGNED BY THE CLAIMANT. BEFORE BEING ASKED TO SIGN THE CONSENT THE CLAIMANT MUST BE GIVEN AN OPPORTUNITY TO SEE THE REPORT OR REPORTS TO BE FORWARDED AND HAVE AN OPPORTUNITY TO INDICATE WHAT CORRECTIONS HE OR SHE BELIEVES SHOULD BE MADE. IF CORRECTIONS REQUESTED BY THE CLAIMANT ARE NOT MADE, THE FACT OF THE REQUEST SHOULD BE NOTED ON THE MEDICAL RECORDS THAT ARE FORWARDED.

Comment:

The WCB comments that although this recommendation will not affect the adjudication of compensation claims, a considerable delay in the handling of such enquiries will be encountered, since the injured worker must be given an opportunity of seeing the report and to indicate what corrections, he feels, should be made.

WCB medical staff feel that lay persons should not attempt to interpret scientific and clinical findings or conclusions in health information documents.

WCB points out the question also arises of who will sign the consent if the worker is mentally incapable of giving it.

The OMA has no objection to the recommendation.

OHA agrees with the recommendation.

Recommendation:

See general recommendation.

153. (1) THAT WHEN NEW GUIDELINES ARE FORMULATED TO ACKNOWLEDGE SPECIFIC ILLNESSES AS BEING INDUSTRIAL ILLNESSES, THE WORKMEN'S COMPENSATION ACT BE AMENDED TO ALLOW THE BOARD TO OBTAIN FROM THE COMPANIES ADMINISTERING THE PENSION PLANS ON BEHALF OF THE EMPLOYEES THE NAMES OF THOSE EMPLOYEES WHO ARE SUFFERING FROM, OR HAVE DIED, AS A RESULT OF, THE ILLNESSES.

(2) THAT WHERE AN EMPLOYER IS THE ADMINISTRATOR OF THE PENSION PLAN ON BEHALF OF THE EMPLOYEES, THE INFORMATION BE OBTAINED FROM THE DEPARTMENT OR EMPLOYEE OF THE EMPLOYER RESPONSIBLE FOR THE ADMINISTRATION OF THE PLAN.

Comment:

The WCB agrees with the recommendation as it will assist the Board in identifying workers or dependents who may have entitlement to benefits under the Workmen's Compensation Act.

Recommendation:

Implement the recommendation.

Chapter 33: The Occupational Health and Safety Act, 1978

154. THAT THE RIGHT OF THE EMPLOYEES TO HAVE ACCESS TO ALL THEIR HEALTH RECORDS GENERATED OR MAINTAINED WITHIN THE WORK PLACE, INCLUDE THE RIGHT TO HAVE ACCESS TO THE RESULTS OF ALL BIOLOGICAL OR OTHER TESTING REQUIRED TO BE DONE ON THEM.

Comment:

The CPSO disagrees with the recommendation. It believes that employees should not have access to records but are entitled to information.

The OMA disagrees with complete access but agrees that the employee should have access to information from records especially the results of biological or other tests relating to the job as they affect the employee's health.

The OHA agrees with the recommendation.

The WCB agrees with the recommendation.

Recommendation:

It is recommended that employees have the right to have access to the results of all biological or other testing required to be done on them within the work place including an interpretation of the results.

155. THAT A WORKER BE ADVISED IMMEDIATELY OF THE PRESENCE OF ANY ABNORMAL OR UNUSUAL CONDITION IS DETECTED BY PERIODIC EXAMINATION, OR BY THE RESULTS OF LABORATORY TESTING OR X-RAYS, WHETHER WORK RELATED OR NOT.

Comment:

The CPSO agrees with the recommendation.

OMA comments that the work "immediately" begs interpretation but agrees that if a worker has an adverse medical condition he should be so informed.

OHA agrees with the recommendation.

WCB agrees with the recommendation, but points out that if implemented, it will increase the number of compensation claims when the employee is removed from exposure employment.

WCB also feels that the most knowledgeable physician should be the person who will determine as to who should inform the worker in this regard, particularly in cases of such diseases as silicosis, asbestosis and cancers.

Recommendation:

Implement the recommendation.

156. (1) THAT, WHERE THE EMPLOYER MAINTAINS AN OCCUPATIONAL HEALTH SERVICE, A RECORD BE KEPT WHICH SHOWS THE DATES OF VISITS WITH AN INDICATION OF THE REASON FOR THE VISITS.

(2) THAT THE JOINT HEALTH AND SAFETY COMMITTEE AND THE HEALTH AND SAFETY REPRESEANTATIVE HAVE A RIGHT OF ACCESS TO THIS RECORD.

Comment:

The CPSO agrees with section (1) of the recommendation but disagrees with section (2). The committee should not have right of access to identifiable information without the consent of the employees and should only be provided with statistical data.

The OMA disagrees with the recommendation with respect to section (1) the information should be classed as confidential information and treated accordingly. With respect to section (2) it is pointed out that there may be many visits made by a workman to the health service which are not work related. Information about these visits are not directly related to the work place and should not be available to the health and safety committee or health and safety representative.

OHA disagrees for the same reason.

WCB agrees with section 1 of the recommendation but does not agree with the second section for reasons already stated.

Recommendation:

This recommendation requires further consultation with the Ministry of Labour and with occupational health officials before any decision is made regarding implementation.

157. THAT THE JOINT HEALTH AND SAFETY COMMITTEE BE ALLOWED ACCESS TO THE RESULTS FROM BIOLOGICAL MONITORING OF EMPLOYEES REQUIRED BY THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1978.

Comment:

The CPSO agrees with the recommendation.

OMA comments that this would provide access to other data by lay people which could lead to misinterpretation and misunderstanding. Explanations and close communications with the health physician are necessary when considering the results of any tests.

OHA suggests that the identities of the employees should not be made available to the Committee.

WCB agrees with the recommendation provided the worker is not identified.

Recommendation:

Implement the recommendation if the Ministry of Labour agrees but ensure the access to results is accompanied by interpretation by the health service physician and that personal identification is not permitted without the consent of the individual.

158. THAT THE JOINT HEALTH AND SAFETY COMMITTEE OR HEALTH AND SAFETY REPRESENTATIVE BE PLACED UNDER A DUTY OF CONFIDENTIALITY AND BE PROVIDED WITH GUIDELINES PREPARED BY THE MINISTRY OF LABOUR IN CONSULTATION WITH THE MINISTRY OF HEALTH, RELATING TO CONFIDENTIALITY OF HEALTH INFORMATION GENERALLY.

Comment:

The CPSO agrees with the recommendation.

The OMA questions whether the recommendation will provide confidentiality.

WCB comments that if access is to be given then the guidelines should spell out the consequences for breach of confidentiality rules by members of the committee.

Recommendation:

The recommendation requires further consideration and consultation with the Ministry of Labour prior to any decision re implementation.

159. (1) THAT THE JOINT HEALTH AND SAFETY COMMITTEE OR HEALTH AND SAFETY REPRESENTATIVE MAY NOT DISCLOSE INFORMATION CONCERNING THE HEALTH OF AN EMPLOYEE TO THE EMPLOYER OR TO OTHER EMPLOYEES WITHOUT THE CONSENT OF THE WORKER TO WHOM THE INFORMATION RELATES.

(2) THAT WHERE THE CONSENT OF THE WORKER TO WHOM THE INFORMATION RELATES CANNOT BE OBTAINED BECAUSE OF THE DEATH OR ILLNESS OF THAT PERSON, OR BECAUSE THE PERSON IS NO LONGER EMPLOYED BY THE EMPLOYER, THERE BE A DISCRETION TO RELEASE THE INFORMATION IF THE COMMITTEE OR REPRESENTATIVE IS OF THE OPINION THAT THE HEALTH OF WORKERS IN GENERAL IS BEING ADVERSELY AFFECTED BY HAZARDOUS CONDITIONS IN THE WORK PLACE.

Comment:

The CPSO agrees with the recommendation.

OHA agrees with the recommendation.

WCB agrees with section (1) of the recommendation but with respect to section (2) the committee members or representatives should discuss the matter with the worker's physician before exercising their discretion to release information.

Recommendation:

This recommendation requires further consideration in consultation with the Ministry of Labour and with advice from occupational health physicians.

160. THAT, WHERE A TRADE UNION RECEIVES INFORMATION UNDER SECTIONS 25, 26 AND 27 OF THE OCCUPATIONAL HEALTH ACT, 1978, RECOMMENDATIONS 158 AND 159 ABOVE, APPLY TO THAT INFORMATION IN THE HANDS OF THE TRADE UNION.

Comment:

The CPSO agrees with the recommendation.

The OMA agrees only if the information is allowed to become available.

OHA agrees with the recommendation.

WCB feels that here again the consequences for a breach of disclosure rules should be clearly spelled out.

Recommendation:

This recommendation requires further consideration in consultation with the Ministry of Labour and occupational health physicians.

161. THAT THE PRESENT PRACTICE OF ADVISING THE LOCAL MEDICAL OFFICER OF HEALTH OF AN ABNORMALITY IN AN EMPLOYEE DETECTED BY TESTING PURSUANT TO THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1978 BE AUTHORIZED BY AN AMENDMENT TO THE PUBLIC HEALTH ACT, OR THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1978.

Comment:

The CPSO, OMA and WCB all agree with the recommendation.

Recommendation:

Implement the recommendation.

162. THAT NOTICE TO THE LOCAL MEDICAL OFFICER OF HEALTH BE GIVEN WHEN

(A) AN ABNORMALITY IS DETECTED IN A WORKER AND THERE IS NO COMPANY OR FAMILY PHYSICIAN TO WHOM THE REPORT MAY BE SENT; OR

(B) BECAUSE OF THE WORK ENVIRONMENT THERE MAY BE A HEALTH RISK TO FAMILY MEMBERS OF THE WORKER.

Comment:

The CPSO, OMA and WCB all agree with the recommendation.

Recommendation:

Implement the recommendation.

163. (1) THAT THE RESULTS OF TESTING OF WORKERS FOR EXPOSURE TO OCCUPATIONAL HAZARDS BE SENT TO THE REQUESTING PHYSICIAN AND NOT TO THE EMPLOYER.

(2) THAT THE PHYSICIAN INTERPRET THE RESULTS AND ADVISE THE EMPLOYER WHETHER A GIVEN WORKER IS FIT TO CONTINUE IN THE SAME JOB AND WHETHER ANY MODIFICATIONS OF THE EMPLOYMENT SHOULD BE EFFECTED.

(3) THAT THE EMPLOYER MAY RECEIVE A SUMMARY OF RESULTS WITH A BREAKDOWN OF THE NUMBER OF ABNORMALITIES FOUND AMONG THE WORKERS, PROVIDED THAT IDENTIFIABLE INFORMATION IS NOT INCLUDED IN THE SUMMARY.

Comment:

The CPSO agrees with the recommendation.

The OMA comments that the requesting physician, when not a company physician, may not be the appropriate physician to decide on the suitability of the work place.

WCB agrees with the recommendation provided the advice mentioned in section (2) is given immediately.

Recommendation:

Implement the recommendation.

164. THAT THE INDUSTRIAL CHEST DISEASE SERVICE DISCONTINUE THE PRACTICE OF DISCLOSING TO EMPLOYERS THE NAMES OF WORKERS SUSPECTED OF HAVING CONTRACTED TUBERCULOSIS.

Comment:

The CPSO agrees with the recommendation.

WCB disagrees with the recommendation pointing out that if the employer is not made aware that the worker has tuberculosis, he might continue working and therefore unnecessarily expose his fellow employees to the danger of contracting this disease.

Sudbury Memorial Hospital comments that this recommendation appears to be contradictory to recommendations 62, 65, 66 and Regulation 729 under The Public Hospitals Act.

Ontario Physiotherapy Association questions the advisability of this recommendation, one member pointing out that employers should know if there is a threat to other employees or patients or if it influences the performance of the employees.

Recommendation:

This recommendation requires further consultation with the Industrial Chest Disease Service and occupational health physicians before any decision is made regarding its implementation.

165. THAT ONLY INSPECTORS WHO ARE PHYSICIANS WORKING WITHIN THE MINISTRY OF LABOUR BE ALLOWED TO INSPECT HEALTH RECORDS IN THE WORK PLACE.

Comment:

The CPSO agrees with the recommendation.

The OMA questions whether there may not be occasions where the Ministry of Health should also be allowed to inspect records in the work place.

Sudbury Memorial Hospital also queries whether there are occasions when the Ministry of Health should be allowed to inspect records in the work place.

WCB feel that Workmen's Compensation Board personnel such as claims investigators, physicians, vocational rehabilitation counsellors, etc. should have the same authority.

Ontario Physiotherapy Association feels that only health care workers employed by the Ministry of Labour may need access to employee health information and that the recommendation should be broadened, therefore, to allow health care workers employed by the Ministry of Labour with reason to have access to this type of information with the company maintaining a log of all such inspection.

Recommendation:

There should be further consultation with the Ministry of Labour and Workmen's Compensation Board before any decision is made regarding the implementation of this recommendation.

166. (1) THAT THE OCCUPATIONAL HEALTH AND SAFETY DIVISION OF THE MINISTRY OF LABOUR ISSUE GUIDELINES SETTING OUT IN WHAT CIRCUMSTANCES ACCESS TO HEALTH RECORDS IN THE WORK PLACE WILL BE SOUGHT AND THE RECORD COPIED.

(2) THAT ACCESS TO THESE HEALTH RECORDS BY THE DIVISION NOT BE CONDITIONAL UPON THE CONSENT OF THE EMPLOYEES WHO ARE THE SUBJECTS OF THE RECORDS, PROVIDED THE GUIDELINES REFERRED TO ABOVE ARE FOLLOWED.

(3) THAT THE EMPLOYEES TO WHOSE RECORDS ACCESS WILL BE SOUGHT BE GIVEN NOTICE SETTING OUT THE PURPOSE FOR WHICH ACCESS TO THE RECORDS IS SOUGHT.

Comment:

The CPSO agrees with the recommendation.

The OMA does not disagree with the recommendation but comments that it may be advisable to have some outside interests such as the OMA participate in the development of guidelines pertaining to access to health records in the work place.

The OHA agrees with the recommendation.

WCB agrees and comments that their staff would be pleased to participate in the development of guidelines.

Recommendation:

Implement the recommendation using the offered assistance of outside agencies such as OMA and WCB if deemed advisable.

167. THAT A SYSTEM OF CONTROL AND PHYSICAL SECURITY OF THE RECORDS IN THE PHYSICAL POSSESSION OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION BE ESTABLISHED TO ENSURE THAT THEIR INTEGRITY IS MAINTAINED AND THAT THEY ARE UNAVAILABLE TO UNAUTHORIZED PERSONS.

Comment:

The CPSO, OMA, OHA and WCB all agree the WCB commenting that the system should not jeopardize legitimate research.

Recommendation:

Implement the recommendation.

168. THAT WRITTEN GUIDELINES BE PREPARED INDICATING WHEN AND IN WHAT CIRCUMSTANCES ANY SHARING OF IDENTIFIABLE EMPLOYMENT HEALTH INFORMATION WITH OTHER GOVERNMENT DEPARTMENTS OR AGENCIES MIGHT BE PERMITTED.

Comment:

The CPSO, OMA, OHA, all agree with the recommendation.

WCB feels that these guidelines should allow certain Workmen's Compensation Board personnel (claims investigators, physicians, vocational rehabilitation counsellors, etc.), to have access to health information.

Recommendation:

Implement the recommendation with consultation between the Ministries of Health and Labour.

169. THAT USE OF THE MINISTRY OF LABOUR'S IDENTIFIABLE OCCUPATIONAL HEALTH INFORMATION BE SUBJECT TO RECOMMENDATION 94 RELATING TO RESEARCH.

Comment:

The CPSO feels that identifiable health information should only be made available without the consent of the individual to a member of the staff of a facility who is qualified to do research.

OMA, OHA and WCB all agree with the recommendation.

Recommendation:

Implement the recommendation.

170. THAT A RECORD ACCESSIBLE TO THE PUBLIC BE KEPT OF ALL PERSONS OR GROUPS REQUESTING ACCESS TO THE MINISTRY OF LABOUR'S IDENTIFIABLE OCCUPATIONAL HEALTH INFORMATION FOR RESEARCH PURPOSES AND OF WHETHER SUCH ACCESS HAS OR HAS NOT BEEN GRANTED.

Comment:

The CPSO, OMA, OHA and WCB all agree with the recommendation.

Recommendation:

Implement the recommendation.